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ABSTRACT

These Congressional hearings provide the text of and materials related to proposed Senate Bill S. 521, intended to promote the public welfare by protecting institutionalized children from abuse, and Senate Bill S.1924, which would create a central federal file of sexual assault and child molesting arrests and convictions. This federal file would allow businesses and organizations that hire persons whose employment brings them into regular contact with children to have access to arrest or conviction records for the purpose of determining the suitability of job applicants. Testimony reflects the opinions and experiences of United States Senators, Congressmen, representatives from the Federal Bureau of Investigation, district attorneys, doctors, directors of clinics and child care centers, professional associations, and concerned parents. A substantial part of the hearings focus on federal assistance given to states to prevent abuse in child care facilities. Also included are excerpts from the President's Task Force on Victims of Crime; criteria for high quality early childhood programs developed by the National Association for the Education of Young Children; a statement submitted by the Washington, D.C. and Maryland Chapters of Society's League against Molestation; and an article on the scope, impact, and legal ramifications of sexual exploitation of children. (HOD)

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S. Hrg. 98-1201

FEDERAL ASSISTANCE TO STATES TO PREVENT THE ABUSE OF CHILDREN IN CHILD CARE FACILITIES

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 521

A BILL TO PROMOTE THE PUBLIC WELFARE BY PROTECTING INSTITUTIONALIZED CHILDREN FROM ABUSE

S. 1924

A BILL TO CREATE A CENTRAL FEDERAL FILE OF SEXUAL ASSAULT AND CHILD MOLESTING ARRESTS AND CONVICTIONS TO ALLOW BUSINESSES AND ORGANIZATIONS WHO HIRE PERSONS WHOSE EMPLOYMENT BRINGS THEM INTO REGULAR CONTACT WITH CHILDREN TO HAVE ACCESS TO SUCH ARREST OR CONVICTION RECORDS FOR THE PURPOSE OF DETERMINING THE SUITABILITY OF JOB APPLICANTS

APRIL 11 AND SEPTEMBER 18, 1984

Serial No. J-98-111

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FEDERAL ASSISTANCE TO STATES TO PREVENT THE ABUSE OF CHILDREN IN CHILD CARE FACILITIES

WEDNESDAY, APRIL 11, 1984

U.S. Senate,
Subcommittee on Juvenile Justice,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Present: Senator Grassley.

Staff present: Mary Louise Westmoreland, chief counsel and staff director; Bruce King, counsel; Ellen Greenburg, professional staff member; Lynda Nersesian, counsel for Senator Grassley.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator Specter. Good morning ladies and gentlemen. We will commence this hearing.

At today's hearing, we will be considering the proposed measures to prevent the all too frequent incidents of physical and sexual abuse of children which, regrettably, are taking place in a wide range of settings, including day care, schools, foster and group homes. We will be considering two bills today which will seek to deal with this issue—legislation introduced by my distinguished colleague, Senator Grassley from Iowa, and myself.

The whole problem of child abuse is one of growing magnitude and growing problem in this country, as evidenced by incidents where a 19-year-old young man in California was charged with killing his father, who was involved in sexual abuse of a younger member of the family, and a guilty plea and a conviction and sentence of public service; a case involving a teenage girl who complained about sexual abuse in her home, proceeds to a trial, refuses to testify because of the breakup of the family, a contempt citation, the child winds up in custody, and the alleged perpetrator walks out.

There is a wide range of sexual abuse which is ongoing in this society, ranging from private incidents within a family to larger group settings.

The recent report of the young child, 10 years and 8 months, out of Chicago, who was found to be pregnant, having had sexual relations with three men, is really appalling and shocking. The Juvenile Justice Subcommittee is seeking to explore the underlying facts on these problems and seeing what might be done by way of Federal assistance. That is possible in a variety of actions. Federal legislation is possible, as we shall explore today. It may be that through the Office of Juvenile Justice and Delinquency Prevention, that Federal funding can be made available for innovative programs on the State level.

But there is no question about the widespread nature of the problem, the seriousness of the problem, and the urgency of some action to try to cope with this very horrendous situation.

[The text of S. 521 follows:]

98TH CONGRESS
1ST SESSION

S. 521

To promote the public welfare by protecting institutionalized children from abuse.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17 (legislative day, FEBRUARY 14), 1983

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To promote the public welfare by protecting institutionalized children from abuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Juvenile Detention Employees Clearance Act of 1983".

SEC. 2. (a) The Congress hereby finds that—

(1) Government agencies operating juvenile detention, correction, care and treatment facilities may employ a former criminal offender because they are not aware of criminal backgrounds and convictions in other jurisdictions;

(2) employing former criminal offenders convicted of violent, assaultive conduct or sexual-related offenses to work in juvenile facilities exposes juveniles committed to official custody to abuse and mistreatment;

(3) before hiring former criminal offenders or assigning them inappropriate employment opportunities working with juveniles committed to official custody, Government agencies should conduct criminal record checks to ascertain whether they committed criminal acts that bear on specific work responsibilities.

Sec. 3. Add to chapter 21 of title 42 the following new section:

"Section 1. (a) No person shall be employed at a facility maintained for the detention, correction, care or treatment of juveniles unless a nationwide criminal record check has been conducted to ascertain whether the individual has engaged in criminal acts that have a specific relationship to job performance and whether he poses a significant danger of abuse or mistreatment of the juveniles.

(b) The Attorney General shall assist State governments in their efforts to conduct criminal record checks on persons seeking employment at facilities maintained for the detention, correction, care or treatment of juveniles by furnishing criminal identification and criminal history information on a confidential basis and facilitating the exchange of such information through a national index of State records, such as the Interstate Identification Index.”.

Senator **Specter**. I am now pleased to call on my distinguished colleague, Senator Grassley, for his opening statement.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator **Grassley**. Thank you very much, Mr. Chairman.

I want to make a statement that I wish I did not have to make. I will not be able to be here for this hearing because the Budget Committee is in session, and I am a member of that Budget Committee, and I have a budget proposal that I have to be there to defend.

I want to apologize to all those people who have come to testify on this very important issue and say that I am sorry I cannot be here to hear the oral testimony, but I will have an opportunity to study it in written form, and I have staff present.

But in the process of my apologizing, I do not want that to detract from the compliment that I want to give to our chairman for the hard work that he has put in not only this bill, by being here these hours to hear this testimony, but in general. He has devoted a great number of hours in the 3½ years I have known him, into legislation on behalf of the children of this country. And I think the most outstanding effort that I could refer to is his shepherding through the bill to eradicate child pornography. I think that without his leadership as chairman of this subcommittee, that bill would never have passed, and most importantly, we would have never been able to come up with the very strong measure that we did negotiate. The bill should be just about ready for the President's signature if the House acts on the measure.

Now, in regard to this legislation, Mr. Chairman, I want to thank you a second time for holding this hearing, and apologize for not being here. But I introduced on October 5 this legislation, which would create a central file of sexual assault and child molesting arrests and convictions. I did this in order to allow businesses and organizations access to prospective employees' backgrounds to determine the suitability of job applicants for jobs that bring them into regular contact with children.

Now, I introduced this legislation prior to the revelations that recently hit the news out of the State of California of possible sexual abuse of more than 100 children. Child abuse experts in California have, according to media accounts, been stunned by the case that took place there in which prosecutors have charged seven adults working at the day care center with abusing as many as 125 children in the past 10 years. FBI and State investigators are, of course, looking into charges that the children were photographed and filmed as part of a pornography ring and perhaps used as unwitting prostitutes.

Recognized experts in this area have characterized the child molestation problem as one which continues to thrive behind closed doors because the victims, usually through fear and lack of understanding, have failed to come forward.

According to a recent report of the nationwide incidence of sexual offenses against children, it is estimated that in a 1-year period, there were 74,000 reported sexual offenses against children. Experts in the field of child abuse estimate that the number of unreported sexual assaults is at least three or four times the reported number.

I introduced this legislation after looking at a recommendation of the President's Task Force on Victims of Crime, and for the record, I would like to acknowledge the Chairman of that Commission, Lois Harrington, Assistant Attorney General at the Department of Justice.

Mr. Chairman, I ask that I might be allowed to insert that recommendation, as well as an insert of the lengthier remarks that I made when I introduced this legislation.

Senator SPECTER. Without objection, so ordered.

[The text of S. 1924, introduction remarks by Senator Grassley, and excerpts from the President's Task Force on Victims of Crime follow:]

98TH CONGRESS
1ST SESSION

S. 1924

To create a central Federal file of sexual assault and child molesting arrests and convictions to allow businesses and organizations who hire persons whose employment brings them into regular contact with children to have access to such arrest or conviction records for the purpose of determining the suitability of job applicants.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5 (legislative day, OCTOBER 3), 1983

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To create a central Federal file of sexual assault and child molesting arrests and convictions to allow businesses and organizations who hire persons whose employment brings them into regular contact with children to have access to such arrest or conviction records for the purpose of determining the suitability of job applicants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress adopts the findings of the President's Task Force on Victims of Crime and finds that—

(1) the acquisition, collection, and classification of arrests and convictions for acts of child molestation in

a centralized computer data bank would aid law enforcement officials in identifying the wrongdoer and preventing crimes against children before they occur;

(2) child molesters and others who prey on children frequently seek employment in or volunteer for positions that give them ready access to youngsters;

(3) exposure to child molesters and others who prey on children is harmful to the psychological, emotional, and mental well-being of children;

(4) many of these individuals have records of repeated and exploitative acts against children, but, because of privacy laws protecting arrest records, their employers remain ignorant of the danger they impose;

(5) child molesting conduct is purposeful and there is little motivation for change, and treatment is usually unsuccessful;

(6) recent data suggests that this conduct will continue throughout the life of a child molester and will escalate as he ages;

(7) current criminal procedures require that the victim come forward with a defensible complaint that will withstand extensive investigation;

(8) avoidance of public embarrassment and risk of further trauma to the child has retarded the number of cases reported and prosecuted; and

(9) this legislation is a proper response to the urgent need of law enforcement officials to identify and prevent incidents of child molestation by making arrest and conviction records available to businesses and organizations that hire persons whose employment would bring them into regular contact with children.

Sec. 2. Within one hundred and eighty days after the enactment of this Act, the Attorney General shall—

(1) establish within the Department of Justice a central file which shall be known as the "Child Care Protection and Employee Responsibility File"; and

(2) acquire, collect, classify, and preserve, in such file, records of all arrests and convictions in State and Federal courts for all offenses involving sexual abuse of children, including child molesting, sexual assault of a child, and pornography involving children.

(b) Information contained in the Child Care Protection and Employee Responsibility File shall be available to any business or organization that deals primarily with the care or education of children pursuant to the provisions of section 3. The Attorney General shall promulgate regulations for determining whether an organization is eligible to receive information from the file.

Sec. 3. (a) Any qualified child care organization seeking information from the file concerning a prospective employee may submit the name of the prospective employee to the Department of Justice for an arrest and conviction search.

(b) If the prospective employee has any combination of three or more arrests or any conviction on record, the Department of Justice shall, within forty-eight hours of receiving a request for search pursuant to subsection (a), advise the requesting organization of such arrests or convictions.

SEC. 4. The Child Care Protection and Employee Responsibility File shall be administered in accordance with the limitations of the Privacy Act of 1974.

By Mr. GRASSLEY:

S. [illegible]. A bill to [illegible] a Federal file of sexual assault and child molesting arrests and convictions to allow businesses and organizations who hire persons whose employment brings them into regular contact with children to have access to such arrest or conviction records for the purpose of determining the suitability of job applicants; to the Committee on the Judiciary.

FEDERAL FILE OF SEXUAL ASSAULT AND CHILD MOLESTING ARRESTS AND CONVICTIONS

● Mr. GRASSLEY. Mr. President, on July 16, 1982, this Chamber passed child protection legislation designed to eradicate child pornography. In a continuing effort to insure the health, safety, and welfare of our Nation's single most important investment in the future, I come before you and my colleagues to introduce this bill which will aid law enforcement officials in preventing child molestation.

Outwardly, we condemn child molestation as a vile and indecent act against our children, however, like other forms of child abuse that remain taboo subjects, we have failed miserably in our attempts to prevent it. In part, our failure is due to our inability to identify and understand the problem. Experience has demonstrated that it is misleading to characterize child molesters as men who lurk in dark alleys and along side streets; rather, they are to be found in our homes, schools, and in the company of our own children. In many cases, the molester is the child's parent, teacher, babysitter, activities director, bus driver, or other adult who shares a special relationship with the child.

Apart from these generalizations and truisms, we lack concrete information about persons predisposed toward committing a crime that threatens our children's health and well-being. Like rape, a majority of these cases are not reported and so the lack of available information makes it difficult for law enforcement officials to identify and prevent this deviant behavior.

Recognized experts in this area such as Suzanne M. Sgroi and Dr. David Finkelhor have characterized this problem as one which continues to thrive behind closed doors because the victims have failed to report the offenses. According to these experts, factors that contribute to the low incidence of reporting are; fear on the part of the child of being punished by the molester, fear of family embarrassment and future threat of trauma to the child. According to a recent report on the nationwide incidence of sexual offenses against children, it is estimated that in a 1-year period there were 74,730 reported sexual offenses against children; experts in the field of child abuse estimate that the number of unreported sexual assaults is at least three or four times the number reported.

We must take positive steps to insure that our children are protected from those who have demonstrated an abnormal attraction for children. These individuals pose a dangerous threat to the physical and mental well-being of our children because their conduct is purposeful and according to President Reagan's Task Force on Victims of Crime, the most recent data suggests that "this conduct will continue throughout the molester's life and will escalate as he ages."

For these reasons I am offering this legislation which authorizes the Attorney General to establish a Federal information gathering system for the purpose of collecting and disseminating information that relates to individuals who have been arrested or convicted for the crime of child molestation. This Federal network, to which the States can voluntarily submit pertinent information, will exist to supply much needed information to businesses and organizations that hire persons whose employment brings them into regular contact with children.

In an effort to prevent any vexatious or vindictive accusations made with the intent of tainting an adult's otherwise honorable reputation, the scope of this bill is narrowly aimed at identifying only those individuals who have at least three arrests or one conviction of sexual molestation on record. Hence, this legislation would only apply to those individuals who have been accused, arrested, or arraigned for three or more acts of child molestation. I believe that this provision sufficiently safeguards an individual's reputation.

While I am fully aware of the constitutional safeguards that restrict public access to personal records, it is by now self-evident that many aspects of our life are no longer private. Today, the collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces and the enforcement of the criminal laws, all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed.

Additionally, I wish to express my concern that the present legal system functions in a manner that fails to adequately safeguard our children. It should be underscored that criminal sanctions which are available to victims of child molestation come too late and cannot effectively redress the permanent damage that result form acts of child molestation. Second, the molested child is required to come forward with a defensible complaint that will withstand extensive investigation and probing. In the few cases in which the victim has prevailed, the sentence imposed for this deplorable conduct are significantly lower than terms for adult sexual assault. In one such case, a child was molested by a day care center employee and the accused was sentenced to a month in county jail.

In closing, I fear that the pendulum of criminal justice has swung too far in favor of the accused—so much so that the victims of crime have been transformed into the group penalized by a system originally designed to protect them. This reversal must be corrected; the scales of justice put back into balance; and the well being of our children must once again be a paramount goal.

While I do commend those who work with children for the fine job that they are doing and indeed believe that the vast majority are dedicated and law abiding citizens, there are a dangerous few who choose occupations that afford them ready access to their potential victims.

This legislation that I am proposing today would help stop child molestation dead in its tracks by identifying those individuals who pose a potential threat to the well being of our children. Only through this kind of legislation can we effectively safeguard the physical and psychological well being of our children and their continued growth into fully matured citizens.

I request unanimous consent that this bill be printed in the RECORD in its entirety.

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(EXCERPTS)

PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME

Task Force Members

Lois Haight Herrington,
Chairman

Garfield Bobo
Frank Carrington
James P. Damos
Doris L. Dolan
Kenneth O. Eikenberry
Robert J. Miller
Reverend Pat Robertson
Stanton E. Samenow

FINAL REPORT DECEMBER 1982

* * * * *

Executive and Legislative Recommendation 9: Legislation should be proposed and enacted to make available to businesses and organizations the sexual assault, child molestation, and pornography arrest records of prospective and present employees whose work will bring them in regular contact with children.

Can't we change the privacy laws so that places of employment can be responsible to those they serve? Here we had a known child molester working with children. Surely we can do better than that.—a victim's mother

Pedophiles and others who prey on children frequently seek employment in or volunteer for positions that give them ready access to youngsters. Although the vast majority who work with the young are dedicated and law-abiding citizens, there are a dangerous few who choose occupations such as recreation director, bus driver, teacher, and coach to have ready access to those they seek to victimize. Many of these individuals have records of violent or exploitative acts against children, but because of privacy laws protecting arrest records, their employers remain ignorant of the danger they impose.

As discussed elsewhere in this report, child molesters have a sexual preference that manifests itself in repeated criminal acts and that is highly resistant to treatment (see Prosecutors Recommendation 8 and Judiciary Recommendation 10). For them, any child might be a potential victim and thus their access to children must be restricted. It is a profound disservice to children to fail to take reasonable and necessary steps for their protection.

A true pedophile, whose sexual preference is the child, is a danger to children all his life, and at least should not be allowed around them.—Irving Prager

Relying on the firmly established and commendable presumption of innocence until guilt is proven, there are laws of privacy that protect arrest records. Difficulty arises, however, in applying this principle to child molestation, in which laws relating to child testimony, institutional disinterest in prosecuting difficult cases, and parental desire to spare children the ordeals of testifying have all combined to produce an abundance of arrests for child molestation, but precious few convictions. As a result, if jurisdictionally permitted, the checking on records of convictions only has failed to adequately safeguard those who need it most: children.

The recommended response to this urgent need by governments is the enactment of legislation that would carve out a narrowly defined exception to laws of privacy by making sexual assault, child molestation and pornography arrest records of prospective and present employees available to businesses and organizations who hire persons whose employment will bring them into regular contact with children.[7]

Our current system ensures that brokers and bank tellers are not convicted embezzlers, yet we entrust our children to people operating under the labels of day-care without any sure way of knowing if they have ever been convicted of child molestation. Are our children any less valuable than our money or our other material possessions?—Bea McPherson

* * * * *

Schools Recommendation 2:
School authorities should check the arrest and conviction records for sexual assault, child molestation, or pornography offenses of anyone applying for work in a school, including anyone doing contract work involving regular proximity to students, and make submission to such a check a precondition for employment.

Administrators must take responsibility for employees who come into contact with students. Although the vast majority of those who work with children do so from the desire to help and educate youngsters, a dangerous few seek these positions so they will have ready access to a pool of victims.

The Task Force has recommended elsewhere that arrest records involving sexual assault, child molestation, or pornography be made available, without the necessity of waiver, for anyone applying for employment that would bring them into regular contact with children (see Executive and Legislative Recommendation 9). Until such legislation is passed, educators should take the initiative. It is plainly irresponsible for schools to hire individuals and take the risk that they may be accepting employment in order to victimize children. A written waiver should be required of anyone seeking employment that would put them in regular and close contact with students. This requirement would apply to teachers, counselors, administrators, coaches, bus drivers, janitors, and cafeteria staff. If these positions are filled on a contractual basis

This anguish was even greater because this man was a school bus driver who, we found out, had a record of molestation. Either the bus company didn't have access to those prison records or didn't bother checking these records, or else they just didn't care.—a victim's mother through private enterprise, the contractors should require similar waivers and file written assurances that an appropriate investigation had been completed. Waivers would not be required of privately employed individuals performing services on an irregular and short-term basis such as schoolyard paving, building repair, and spot maintenance.

The waiver would authorize employers to obtain from local and state police, as well as from the Federal Bureau of Investigation, any record of arrest for sexual assault, child molestation, or pornography. This recommendation specifically authorizes discovery of arrest and conviction records, in recognition of the factors that militate against successful prosecution for these crimes (see Prosecutors Recommendation 8).

The Task Force recognizes that these procedures will place a burden on both schools and law enforcement agencies. However, the potential for victimization of school children and the risk of serious harm to them is substantial; this burden is, simply, one that the schools and other agencies must bear.

* * * * *

Senator **Grassley**. That is the end of my statement, and I want to thank you for a third time, because you have really put in a tremendous amount of work for the children of this country, and I only hope that you get the proper recognition; you deserve it.

Senator **Specter**. Well, thank you very much, Senator Grassley, for those very generous remarks. I commend you for your efforts. We have worked together as a team, and I think we are going to get that bill signed.

We are very pleased to have with us this morning the Honorable Ralph Regula, a Member of Congress from Ohio, who has been active and provided some very decisive leadership in this field and, as I understand it, is about to introduce legislation on the criminal record checks.

Congressman Regula serves on the Appropriations Committee and the Select Committee on Aging.

Senator **Grassley**. Mr. Chairman, I would also refer to my friend, too, Ralph Regula, whom I had the opportunity of serving with 6 of the many years that he has been there, together with him in the Senate, and I know him to be a person who is not afraid to take the floor in that sometimes very wild body, and defend his position very well, particularly on spending matters.

Senator **Specter**. Thank you, Senator Grassley.

STATEMENT OF HON. RALPH REGULA, MEMBER OF CONGRESS FROM THE STATE OF OHIO

Mr. **Regula**. Thank you, Mr. Chairman, and thank you, Senator Grassley. I suppose we have some wild exchanges in both houses.

I am pleased to be here, and I want to compliment you, Mr. Chairman, and also Senator Grassley, on your efforts in holding this hearing and in sponsoring and in working to achieve a legislative solution to what is a serious problem. One only need look at the headlines in recent news stories to recognize the difficulties that have arisen because of the inability in many instances of schools and also parents to understand the potential danger to their children.

There is a story in Time Magazine captioned, "Brutalized: Sex Charges at a Nursery"; another in the Washington Post, "Pre-School Investigated," and I note in other editions of the Post, "Bethesda Man Jailed on Sex/Drug Charges Involving Juveniles."

"Counselor Faces More Sex Charges."

"Arrest Made in Assaults," "Southeast Teacher Accused of Indecency with Pupil."

I think these stories point out clearly and graphically the need for some type of legislative enactment that will allow organizations to access information to avoid these incidences in the future.

Ironically, it is clear that those who are involved in assaults on children have an underground network that allows them to communicate, and yet, law enforcement does not have an equally effective way in which to understand what is happening.

I am going to introduce a comparable bill, as you mentioned, Mr. Chairman, tomorrow in the House, because I think it is something that needs to be addressed by Congress in order to protect children.

More and more, this becomes important because in our society today, where we have a lot of working mothers. People are more dependent on day care centers, they are dependent on nurseries, and they certainly have a right to have confidence in the quality of those who are working with their children. It is shocking to think that people would take advantage, as has been the case in California, of innocent small children, nevertheless, we have to address the facts as they exist.

It is interesting to note that it is rarely strangers that are involved. Statistics indicate that only about 9 percent of adults who are involved in taking advantage of small children are strangers to the children. I think that even more graphically illustrates the importance of having legislation that will allow those who are in educational programs, day care centers, and nurseries to find out about the people that they would propose to hire and put into this extremely sensitive position.

I have a longer statement, and with your consent, Mr. Chairman, I would like to introduce my statement for the record and limit my comments to what I have just offered, inasmuch as I recognize you have a lot of other witnesses that want to testify.

Senator SPECTER. Congressman Regula, we would be glad to have your full statement be made a part of the record, and it shall be made, without objection.

Mr. REGULA. Thank you, Mr. Chairman, and again, I congratulate you and commend you for having this hearing. I am confident that you will be successful in moving this legislation. I certainly will help in every way possible to get further action in the House, because it is clear from what has happened in the past several months that something is needed if we are to provide the kind of protection that children and their parents and society are entitled to.

Senator SPECTER. Thank you very much, Mr. Regula.

We appreciate your being here, and we look forward to working with you.

[The prepared statement of Mr. Regula follows:]

PREPARED STATEMENT OF CONGRESSMAN RALPH REGULA

Mr. Chairman:

I want to thank you for this opportunity to testify before your committee today and I would like to commend you and Senator Grassley for the excellent work you have done and for taking such postive action in the defense of our children.

For the past several months, I have been developing legislation that will shortly be introduced in the House which, it seems, is very similar to the bill you are considering here today. I hope we will be able to work together for the passage of this much needed legislation in both the Senate and House.

Over the past decade, the exposure of the heinous crimes of sexual assault, molestation and/or rape against our children have become more and more prevalent in our society. The American Humane Association's 1984 National Report (table included) stated that the estimated number of sexual maltreatment victims in the United States in 1982, as reported to child protective services, numbered 56,607, representing an estimated 40 percent of the child population of the United States. This figure is a drastic increase from 7,559 child victims in 1976, representing an estimated 27 percent of the child population of the United States at that time. However, this is not to say these incidents have increased, simply that they they have been brought out into the open more frequently.

Contrary to what most of us like to believe, the stranger is not the most common perpetrator. In fact, it is estimated that only 9 percent of the perpetrators are strangers. Most of these children are abused over an extended period of time by someone they know and trust, and by someone they are often physically and emotionally dependent upon such as a parent, neighbor, teacher or camp counselor.

These individuals (known as pedophiles — people who are stimulated by sexual activity with children) have their own underground network of information to assist one another in accessing children. In the January, 1984 FBI Law Enforcement Bulletin, it was stated "One article appearing in an underground sex publication explained how a child molester could acquire access to children by volunteering to become involved in programs dealing with children, noting that access is not only easy to obtain but such participation by adults is encouraged."

Dr. Gene Abel, Director of the Sexual Behavior Clinic at the New York State Psychiatric Institute found that the child molesters or pedophiles he studied were "responsible for molesting an average of 68.3 victims." Additionally, many of these pedophiles will, as shown in their underground publication mentioned above, seek out children in the most obvious places. And what are the most obvious places outside the child's home environment? Our schools, day care centers, camps, and other child organizations.

The Federal government has a responsibility to protect our children to the best of its ability and, through the Federal financial assistance given, we have the means to ensure that access to our children is neither "encouraged" nor "easy" for the pedophiles. It is time we acted.

The Childrens' Defense Act of 1984 which I am introducing this week in the House and S. 1924 which you and Senator Grassley introduced here in the Senate will go a long way in stopping these crimes.

The Childrens' Defense Act will ensure that no individual who has been convicted for a sexual offense, consisting of rape, carnal knowledge, sexual assault, or any other sexual contact, perpetrated against a child, shall be hired as an employee, volunteer, or consultant in certain agencies or other organizations, be they public or private, which receives Federal financial assistance established for the primary purpose of engaging in any activity involving direct contact between the personnel of that agency or organization and at least 20 children outside their home environments during any seven day period.

To achieve this goal, these organizations, known as youth-oriented organizations, must access the FBI's records through a state funneling agency requested in my legislation. The state attorney general and the director of the state's funneling agency have the option of mandating any other youth-oriented organization which does not receive Federal financial assistance to also access these records through the funneling agency.

For the youth-oriented organization to avoid unnecessary invocation of formal enforcement procedures, which will include termination of the Federal financial assistance granted to that youth-oriented organization, this Act includes provisions that the organization must first be notified and given a chance to comply voluntarily. Although the Act does not provide specific limits of a time period within which voluntary compliance may be sought, it is clear that requests for voluntary compliance, if not followed by responsive action on the part of the youth-oriented organization within a reasonable time, does not relieve either the Federal agency having authority to extend Federal financial assistance to that organization or that state's funneling agency of the responsibility to enforce this Act. Those agencies and/or organizations consistent failure to do so will be termed derelication of duty and subject to review in court.

A policy of excluding from employment individuals who have suffered a number of arrests without any conviction is unlawful and, therefore, only those individuals for whom a conviction has been found will be denied a position in the youth-oriented organization under this Act.

This Act expressly disclaimes the intent to provide, by virtue of the cessation of Federal assistance as provided for in this Act, a forum for the youth-oriented organizations to discriminate or refuse employment to any applicant on the basis of any conviction of crimes other than sexual offenses, or to discriminate or refuse employment of any applicant who has been alledged or arrested, but not convicted, of the crimes of any sexual offenses.

Court records are frequently excepted from confidentiality requirements and concern over separation of powers usually accounts for the exclusion of court records from the privacy acts.

I believe that criminal justice data, although contained in government records, is potentially sufficientlly harmful as to require additional disclosure control. Therefore, the Freedom of Information Act and public record/sunshine laws shall not negate disclosure, privacy etc. as provided for under this Act.

Mr. Chairman, banks, the securities and exchange commission and various other financial institutions already use the services of the FBI to conduct this very same type of check for prospective employees. These institutions are allowed to refuse employment for persons who were arrested for crimes ranging from shoplifting to murder to ensure that their money is safe. Can we do any less for the safety of our children? We must stop this travesty which maims the physical, emotional and psychological well being of the child.

Again, thank you for the opportunity to appear here before you and I am more than willing to answer any questions on the legislation I have just outlined or on what we can do to work together to ensure a speedy passage of our respective bills.

Estimated Number of Sexual Maltreatment Victims
in U.S. Reported to Child Protective Services
Provided by American Humane Association

	1976	1977	1978	1979	1980	1981	1982
Total # Victims	7,559	11,617	12,257	27,247	37,366	37,441	56,607
% male victims	15%	14%	13%	14%	16%	16%	17%
% female victims	85%	86%	87%	86%	84%	84%	83%
% male perpetrators	79%	81%	79%	79%	80%	78%	78%
% female perpetrators	21%	19%	21%	21%	20%	22%	22%
Estimates are based on the following:							
# states in data base	27	28	27	25	28	23	20
% of child population of U.S.	27%	36%	43%	42%	43%	47%	40

Senator SPECTER. I would like to call now Mr. Melvin Mercer, Section Chief of the Identification Division of the Federal Bureau of Investigation, and Mr. Kenneth V. Lanning, Supervisory Special Agent, Behavioral Science Unit, Federal Bureau of Investigation.

Welcome, gentlemen. We very much appreciate your being with us. We have your statement, Mr. Mercer; I understand it is a joint statement from the two of you gentlemen, and that will be made a part of the record, without objection. To the extent possible, we would appreciate it if you would summarize, leaving the maximum amount of time for questions and answers.

STATEMENT OF MELVIN D. MERCER, JR., CHIEF, RECORDING AND POSTING SECTIONS, IDENTIFICATION DIVISION, FEDERAL BUREAU OF INVESTIGATION, AND KENNETH V. LANNING, SUPERVISORY SPECIAL AGENT, BEHAVIORAL SCIENCE UNIT, FEDERAL BUREAU OF INVESTIGATION

Mr. MERCER. Mr. Chairman, I am Mr. Mercer, and Mr. Lanning is on my right.

This statement, as you have already mentioned, is a joint statement prepared by both of us. Ken is an expert assigned at Quantico, in the Behavioral Science Unit, and is familiar with the problem of pedophiles and so forth.

I am assigned in the FBI Identification Division, where the criminal history records are stored for national checks, and have been so assigned for the last 7 years or so.

Now, what I would like to do Mr. Chairman is briefly cover four areas. First, the problem of trying to identify child molesters that are going to be working in the areas of employment or in occupations bringing them into contact with children; second, go over the FBI's current procedures as we can make criminal history records available to some agencies that are going to be employing that type of applicant; third, touch upon the need for additional Federal legislation in this area; and fourth, mention some problems that might be involved in Federal legislation addressing these issues.

First, the extent of the problem. A pedophile is a male individual who usually has a sexual preference for children. They have an excessive interest in children, and they have to find a way to place themselves around children.

Senator SPECTER. Does a pedophile characteristically have a sexual interest in other than children, people other than children?

Mr. MERCER. I am going to refer that question to Mr. Lanning, Mr. Chairman, if that is all right with you?

Senator SPECTER. Yes, Mr. Lanning.

Mr. LANNING. The answer is generally not. Generally, under the definition of a pedophile, we are talking about someone who either has an exclusive interest in children or, at the very least, children are the preferred sexual object. They can and do sometimes have sexual relations with age-mates, but it is usually a small amount of their sexual activity.

Senator SPECTER. Proceed, Mr. Mercer.

Mr. MERCER. One thing I wanted to emphasize right at the beginning is that most people with this excessive interest in children are not pedophiles. And, speaking from my own experience, having coached Little League baseball for the last 6 years, I would not identify myself in any way with this type of individual. So, there is a big problem in identifying the minority who are pedophiles as opposed to the majority who are good people.

Most of the time, pedophiles gain access to children in four major means: through marriage, through neighborhood associations, occupation or their vocation.

Generally, it is very difficult to open record checks completely, e.g., if a spouse wants to check on her husband, do you allow her to make a check of the FBI central records? The same with neighborhood associations. However, when you get into the area of occupations, employments, or vocations, something more is available to the public, to the public agencies, and can be utilized.

So, as I mentioned, the problem is attempting to distinguish between the well-meaning majority of people and the perverted minority.

Now, to touch briefly on the current FBI procedures, let me give you a brief understanding of what we have in the FBI Identification Division.

That Division was formed after the turn of the century and currently has fingerprint cards representing criminal records on over 22 million people. We receive approximately 27,000 fingerprint cards each day to check against our criminal records. This is almost evenly split between new arrest fingerprint cards or old arrest fingerprint cards—on somebody who already has a record—and different types of civil applicant cards. It is almost 50/50.

Now, the national system is there to make it possible to do one inquiry at a central location and determine if there is a criminal record existing anyplace in the country, since our records are built by arrest agencies throughout the countries. When they arrest someone, they take his/her fingerprints, and they send the fingerprint card to us. We use that fingerprint card and the subsequent information that will be furnished to us regarding the disposition of the charges and so forth, to——

Senator **Specter**. Out of the 22 million criminal records which you have, how many of those are criminal records of pedophiles?

Mr. **Mercer**. Mr. Chairman, we have not been able to keep our records that way. When we started the system, they were maintained manually. So mainly, they contain all types of arrest charges.

Senator **Specter**. So the answer is you do not know?

Mr. **Mercer**. We do not know.

Senator **Specter**. What is the rate of recidivism, repeat offenses, among pedophiles?

Mr. **Mercer**. Again, I will have to refer that one to Mr. Lanning.

Senator **Specter**. Mr. Lanning?

Mr. **Lanning**. Extremely high. Generally, in my experience, it is not a condition which goes away. The sexual interest in children is always there, and they will continue to repeat the offenses for as long as they think they can get away with it.

Senator **Specter**. What has the response of the courts been as a generalization, if you can generalize, on sentencing after convictions of pedophiles?

Mr. **Lanning**. It has tended to vary. In some places in the country, they have recognized the scope and seriousness of this problem; in other places in the country, nonviolent molestation of children is considered almost to be a nuisance offense. It was a nice man and he did not really hurt the child. He was nonviolent, and therefore, it is almost considered to be a nuisance-type offense, in the belief that, "Well, he is sick and there is something wrong with him, and we should not really give him any harsh punishment."

Senator **Specter**. Proceed, Mr. Mercer.

Mr. **Mercer**. Generally, the records that we have for employment and licensing purposes are generally accessed through fingerprint cards coming in to us. In other words, we do not make records available on name checks for employment and licensing. We require fingerprint cards, mainly for positive identification and to avoid easily getting around the system by changing someone's name and so forth.

Now, the criminal records themselves, up until the early seventies were available for licensing and employment purpose. At that time, we had a court decision here in the District that prohibited the FBI Identification Division from making our records available for any non-Federal employment or licensing purpose. Shortly after that, Congress reacted and passed Public Law 92-544, which permits the FBI to exchange identification records if authorized under a State statute approved by the Attorney General, with officials of State and local governments for the purposes of licensing and employment.

So basically, what it comes down to is that Federal authority, that is, Federal legislation, is in place that would allow us, if a State passes a law saying that to work in a day care center or operate a preschool employment-type setup or if a State passes a law and says that in order to get into that field in this particular State, you have to be fingerprinted and have your prints checked with the FBI, we will do that check and handle that request. So the legislation is in place.

The only thing is that also in the early seventies, there was quite an emphasis on privacy and care in the handling of these criminal history records, and to ensure that individuals were not denied employment just because they had an arrest record, which may not have resulted in a conviction and so forth. We have a restriction as far as what information we can disseminate for employment and licensing purposes, and that is, we can only furnish arrest records with dispositions if the arrest is over a year old, allowing that first year to let the case be resolved through the court system, so we would have a final disposition.

Senator SPECTER. Well, suppose it is not resolved in a year, as many cases are not?

Mr. MERCER. This restriction is in the Code of Federal Regulations and we follow that as the way to disseminate information.

Senator SPECTER. You release the records after a year, whether or not the case has been concluded?

Mr. MERCER. After a year, if there is no disposition on that record, we have to withhold the record; we do not release it.

We have no way of knowing—say, if an individual is arrested in Los Angeles, with the volume of records we get in, we cannot follow each individual case to determine——

Senator SPECTER. Well, if a year has elapsed from the time of the arrest, do you then make that record available where it is appropriate for disclosure, and refuse to make it available during the initial year?

Mr. MERCER. No. We refuse to make it available after the year. During the initial year, it is available and wide open, while the charges might still be pending.

Senator SPECTER. You will make the record available and after a year?

Mr. MERCER. After a year, unless we have a final disposition on that record, it is withheld for licensing and employment, and that is pursuant to Federal regulations.

Senator SPECTER. Well, are you able to get dispositions on those pending cases?

Mr. MERCER. What we try to do—and it is an extra task that we undertake there in the Identification Division—any time we get a record that looks like it might be relevant to the employment or licensing inquiry, we will send a teletype out to the arresting agency and request that they forward us the disposition. And if we can get that response within 3 days, we will put it on the record and disseminate that record. So we are doing everything possible to make those records as complete as we can and disseminate them.

Senator SPECTER. Well, one of the grave problems with criminal records across this country is that they very frequently do not have dispositions. Arrest records are maintained extremely well, because they are logged in when people are apprehended, fingerprinted, and photographed, so the arrest records are in good shape. But when a case winds its way through the courts, there is no established procedure to match up a conviction on somebody's arrest record. Conviction will appear in the criminal court records, but there is no automatic way of having a referral, once there is a conviction, to the original arrest record.

Hasn't that been your experience, Mr. Mercer?

Mr. MERCER. That is a problem and has been a problem through the years. We are working closely with the States, with the courts, to solve that problem, and one of the initiatives—I also have brought with me a letter to all our fingerprint contributors, entitled, "Interstate Identification Index—III—" which with your permission, I would like to make a part of the written record, also.

Senator SPECTER. Yes, it will be made a part of the record.

Mr. Mercer, have you had an opportunity to review S. 521, which provides in essence that no person shall be employed in a facility maintained for the detention, correction, care or treatment of juveniles unless a nationwide criminal record check has been conducted to ascertain whether the individual has engaged in criminal acts that have a specific relationship to job performance and whether that person poses a significant danger of abuse or mistreatment of juveniles? Have you had a chance to review that?

Mr. MERCER. Yes, I have, Mr. Chairman.

Senator SPECTER. What is your opinion on whether that bill ought to be passed?

Mr. MERCER. Mr. Chairman, again, I would say that currently, we are doing most of the checks under existing authority that that bill would require.

Under our enabling statute, it allows us to exchange records with any type of criminal justice agency for employment and licensing.

Senator SPECTER. All right, then, you are in a position to make the records available, but this law would require that wherever there is, for example, a detention facility, this statute proposal came out of the investigation that this subcommittee conducted into the juvenile justice system in Oklahoma, where we found that there were many people who had custodial care over juveniles who had criminal records for juvenile mistreatment. The thrust of this law is to say that no State may employ someone who has such a criminal record.

Do you think that is a good idea?

Mr. MERCER. That is a very good idea, because what we have now is a voluntary system, Mr. Chairman, and we have no way of enforcing, or making someone fingerprint somebody who is going to work in that area.

Senator SPECTER. Have you had a chance to review Senator Grassley's proposed legislation, S. 1924?

Mr. MERCER. Yes, I have, Mr. Chairman.

Senator SPECTER. What is your opinion as to whether that bill ought to be passed?

Mr. MERCER. Again, Mr. Chairman, I think with Public Law 92-544, that the FBI has the authority to exchange records with the States as long as there is a State statute.

Now, there are many problems involved with the exchange of criminal records with individual employers. Most of the States, when they pass the State statute saying that if you are going to work in this child care center, or you are going to work in the real estate business or something else in a State, they set up a State board which handles the review of the criminal history records and makes the decision on whether the information in the record is disqualifying for that particular employment or that particular license. Making the records available directly to each and every employer or each and every volunteer group could possibly subject them to wide misuse and lack of control over their use.

Senator **Specter**. Mr. Mercer, let me go back for just a moment to your statement that if you have somebody charged with an offense and there has not been a disposition within 1 year, and you receive a request for that record, you will not disclose the record of arrest of that individual absent a disposition on the case.

Suppose you have a disposition on the case which says acquitted; will you make that available?

Mr. **Mercer**. That is made available, Senator.

Senator **Specter**. And if you have a record which says convicted, you will make that available?

Mr. **Mercer**. Correct.

Senator **Specter**. But if you do not have a disposition, you will not make that record available?

Mr. **Mercer**. That is correct.

Senator **Specter**. I would suggest to you that that standard ought to be reexamined. Why not make that record available, even though there is no disposition, and then the inquiring party can make a further check to see what the disposition was?

Mr. **Mercer**. I agree with you completely, Senator. The Federal regulations were written long before I became involved with the system, and that is what is done at the Federal level. We make the records available to OPM, complete records.

Senator **Specter**. Well, who is the author of this Federal regulation, which does not seem to make too much sense?

Mr. **Mercer**. Well, you have got to look at the climate when those regulations were written. It was about the time of the Privacy Act, the Freedom of Information Act, and everything like that.

Senator **Specter**. Well, I could understand the regulation if it did not make a disclosure of arrests without convictions, because there would be a presumption of innocence. But if it does not seek to preclude that kind of a record disclosure, it does not seem to have any underlying policy justification.

Well, we will take a look at it. If we were trying to rewrite that regulation, what procedures would be followed?

Mr. **Mercer**. Recently, the Nuclear Regulatory Commission, which was also moving to get access to criminal history records for people who are involved in nuclear power plants and so forth, they have written their law so that it excludes this particular restriction. In other words, it is written so all arrest records are available without regard to section so-and-forth of the Code of Federal Regulations.

Senator **Specter**. What is the answer to my question concerning who rewrites the regulation, if you know?

Mr. **Mercer**. The Department of Justice, I believe, Mr. Chairman.

Senator **Specter**. Mr. Lanning, let me pursue for a moment a subject which you testified to a moment ago, and that is the sentencing issue. You say that very frequently, there will not be serious regard taken by some courts on some child molestation cases where there is no violence involved.

What kind of a case would you describe—give us an example or two as to the kinds of cases which are not treated very seriously.

Mr. LANNING. This would be the kind of case which, in my opinion, is much more the typical case, because my experience has been that child molesters typically seduce their kids, seduce their victims, nonviolently, through attention and affection and gifts and bribes and so on.

Senator SPECTER. When you say "seduce," what do you mean? What do they do with them? Do they have sexual intercourse with them?

Mr. LANNING. Well, what we are talking about, what you really have to understand is that although it is different, in an important sense, because you have an unequal relationship, it is in essence the same way a man seduces a woman and a woman seduces a man. They do it over a period of time by being nice to them, buying gifts for them, attention and affection, lowering their inhibitions. They seduce them over a period of time. In other words, they may be willing to take weeks, months, or sometimes even years, to seduce the victim they are targeting.

Senator SPECTER. What is the ultimate act that is involved as a basis for judging the seriousness of the antisocial conduct?

Mr. LANNING. The ultimate act may vary from simple exhibition or fondling all the way to anal or vaginal penetration, and then also into sadomasochistic activity.

Senator SPECTER. Well, all right, if you come to the penetration stage, are you suggesting that there are some courts which do not treat that seriously with a jail sentence?

Mr. LANNING. There may be some. In some cases, what they very often look at and consider is the behavior of the victim. They consider the fact that apparently, the child did not seem to resist or fight, and they often even sometimes bring up the issue that the child may have consented or cooperated, and view that as extenuating circumstances.

Senator SPECTER. Well, if it is penetration, and the child is under 16, which is the common law statutory rape age, there would be an offense with or without consent.

Mr. LANNING. That is correct. But what I am talking about is—I am not saying whether or not they will convict the individual. What I am talking about is how the seriousness of the offense will be viewed by the court for sentencing purposes.

Senator SPECTER. Have you seen some cases involving, as you put it, vaginal or anal penetration which do not draw a jail sentence?

Mr. LANNING. I know of a case—and I do not know exactly what the sentence was—I know there was a case, I believe in Florida, where the judge, I believe, dismissed the charges against the defendant because he said the law was designed to protect virginal children and because the 11-year-old victim was not a virgin, he dismissed the charges against the defendant, as I understand it.

Senator SPECTER. Well, did he find that an offense had occurred, albeit with a nonvirginal child at the tender age of 11?

Mr. LANNING. I do not know all the details of the case. All I know is that he indicated that in his opinion, the law was designed to protect only virginal children, and the child, who had previously had sexual relations, was not protected under the law.

Senator **Specter**. Mr. Lanning, how about a situation where a defendant may engage in nonviolent acts which may be, say, at the level of fondling; is it your experience that an individual who does that is likely, at a later stage, perhaps with another child, to engage in violent acts?

Mr. **Lanning**. There is no clear evidence that these individuals escalate—that they start with one level of sexual activity and move to a more violent level. It does happen, but I cannot say for a fact that it is something we could predict. It does happen in some cases. Some child molesters continue to fondle and do that type of activity for an entire lifetime and never progress into more violent activity.

Senator **Specter**. From your studies or your own experience in the field, what is the nature of the damage to a child who is subjected to fondling?

Mr. **Lanning**. Again, there are a variety of factors that will determine the amount of that damage, but I have found that generally, it is kind of degrees of negative. I know of nobody who has ever reported it as a positive experience. It depends on a variety of factors: Some of which are, what is the relationship between the offender and his victim, how long has the activity been going on, how the seduction process took effect, and so on. But even nonviolent sexual activity can have severe traumatic psychological effect on the victim.

Senator **Specter**. Beyond S. 521 and S. 1924, would either of you gentlemen have any recommendations for Federal legislation in this area?

Mr. **Mercer**. I do not have any, Mr. Chairman.

Mr. **Lanning**. I do not know if you could call it Federal legislation, but I think some of the things that could be done are in the area of increasing public awareness, making the people more aware of the fact that child molesters are not typically dirty old men in wrinkled raincoats. They can be your likeable nextdoor neighbor, they can be a popular schoolteacher, they can be a macho athletic coach. They can be almost anyone. And also, to encourage programs in schools, programs which have been initiated, for example, by the Illusion Theater in Minneapolis, MN, and by Child Assault Prevention project [CAP] in Columbus, OH, and other programs of this type that deal with the broad spectrum of child abuse beyond simply "Stranger, danger."

Senator **Specter**. What kinds of programs are involved in the instances you have mentioned?

Mr. **Lanning**. These are programs which are, I think, best addressed by professional educators who know about child development, and these are programs, in essence, to teach children to distinguish between good touching and bad touching, and also give children a type of assertiveness training, where children are taught that they do have the right to say no.

Many of us make a mistake by giving the message to our children that they need to blindly obey any adult, particularly an adult in an authority position, so when a teacher or a camp counselor or somebody like that makes a suggestive proposal to a child or attempts to seduce the child, very often, children think that they must obey and that they have no right to do otherwise. These programs teach these children that they do have the right to say no, that nobody has the right to touch them in certain places on their body and so on.

Senator SPECTER. Gentlemen, thank you very much. We very much appreciate your being with us, and your testimony has been very helpful.

[The prepared statement of Mr. Mercer and Mr. Lanning follows:]

PREPARED STATEMENT OF MELVIN D. MERCER AND KENNETH V. LANNING

Mr. Chairman and Members of the Subcommittee:

I am Special Agent Melvin D. Mercer, Jr., the Chief of the Recording and Posting Sections of the FBI's Identification Division. Accompanying me is Special Agent Kenneth V. Lanning of the Behavioral Science Unit of the FBI Academy. We are here today at the Chairman's invitation to provide information concerning the problem of child molesters working in child service organizations, the FBI's current procedures and responsibilities regarding exchanging criminal history information for licensing and employment purposes, and our views regarding the need for additional Federal legislation in this area. We will also discuss in a general manner areas of potential problems which the Committee should consider in drafting legislation to permit the dissemination of such records with child service organizations.

Extent of the Problem

A pedophile is typically a male individual with a sexual preference for prepubertal children. Sexual activity with children is the preferred or exclusive method of achieving sexual excitement. Although not necessarily so, most child molesters are pedophiles and most pedophiles are child molesters. Contrary to lingering myths, the child molester is usually not a stranger or a dirty old man in a wrinkled raincoat with a bag of candy. He typically knows his victim, is not dirty or old, and he dresses and looks like everyone else. He typically nonviolently seduces children that he has befriended through the use of attention, affection and gifts. The pedophile is skilled at recognizing and then temporarily filling the emotional and physical needs of children. He is usually willing to spend as much time as it takes to seduce the targeted child. However, it must be emphasized that most people with an apparent excessive interest in children are not pedophiles.

There is only one characteristic of the pedophile which should consistently bring attention to his seduction activity. He will have an excessive interest in children. A pedophile must find a way to be around children. This is typically done through marriage, his neighborhood, his occupation, or his vocation.

Some pedophiles gain access to children by marrying women who already have them. These children are sexually abused and then sometimes also used to lure other children. Other pedophiles simply use their status as a "nice" man in the neighborhood who likes to have the kids at his house. He is more than willing to babysit the neighborhood kids and he is especially willing to take them on weekend or overnight trips. It is important to recognize that being a nice guy has nothing to do with being a pedophile. As a matter of fact, if you are involved in nonviolently seducing children, it helps to be a nice guy.

However, Dr. Ann Burgess, a professor at the University of Pennsylvania and one of the leading experts in the country regarding victims of sexual assaults, found through her study of child sex rings that the most common method of access used by offenders was their occupation. A pedophile may seek employment where he will necessarily be in contact with children (teacher, camp counselor, babysitter, school bus driver, etc.) or where he can eventually specialize in dealing with children (physician, minister, photographer, social worker, police officer, etc.). Frequently the pedophile will use a vocation, hobby, or community service to gain access to children. He may become a scout leader, Big Brother, foster parent, little league coach, etc.

Not only do such occupations and vocations give the pedophile access to children, but they may also give him access to family records or histories which can be used to help him survey and target vulnerable children. In addition, these occupations and vocations give the pedophile a legitimate role as an authority figure in the lives of potential victims. He uses this occupational role to impose authority and control on the child and thus make the seduction process easier and more secure. The use or implied use of this power and authority makes it more likely the victim will cooperate and less likely the victim will tell.

A litany of newspaper headlines from all over the United States confirms the scope of the problem:

"Boys Choir Founder Arrested"
"The 'nice man' next door was too good to be true"
"Charge of aggravated sexual battery against elementary school principal"
"'Friend' lured victims into pornography ring for children"
"Aide accused of sexual abuse at state school"
"Counselor accused of molesting choir boys"
"Middle school guidance counselor admits selling child pornography"
"13 year term for molesting Day-Care kids"
"Cub Scout leader pleaded innocent to sexual abuse"

"Minister charged with molesting boys"
"Teacher held on child porn charges"

A police officer, experienced in the investigation of sexual exploitation of children, recently advised that of four cases he currently had under investigation, one involved the deputy director of the state Boys' Clubs, one involved a state foster parent and "partner" for delinquent youth, one involved a member of the juvenile subcommittee of the state crime commission who made a habit of trying to marry victims' mothers to gain legal custody of them and the fourth involved a local contractor.

However, the scope and nature of this problem is best illustrated by the pedophiles themselves. The following is a quotation from a formerly published "boy-lover" magazine called "Hermes":

> "From your (the man's) point of view, there are many satisfying ways of making contact with boys, ways which are not only socially approved but encouraged! Big Brothers, Boy Scouts, church groups--the list of organizations goes on...Whether or not you have a criminal record or other 'problems' in your past, there is very little chance that anyone will ever know of your interests or check into your background. And it is rare, no matter what you have heard, for people to 'suspect' the man who is unmarried of improper activities or thoughts, unless there is glaring evidence to the contrary."
>
> "Many men think they are easily recognizable as a boy lover, and that their 'cover' will be blown the minute they walk in the door of the YMCA to volunteer. Rubbish. Boy lovers come in so many different types and shapes that no common characteristic can be seen on the surface. Even another boy lover may not recognize you until you tell him what your interests are."

To reiterate, it must be clearly and unequivocally stated that most people with an apparent excessive interest in children are not pedophiles. They are usually well-meaning people with a sincere interest in the welfare of children. The problem is attempting to distinguish between the well-meaning majority and the perverted minority. It is difficult to screen potential spouses or neighbors, but something can be done about screening individuals who will have formal access to children through their occupation, vocation, or volunteer work. This is because many pedophiles will have a history of sexual activity with children.

Current FBI Procedures Relating to the Use of Criminal Records for Screening Prospective Employees

The FBI's Identification Division was established by an Act of Congress in 1924, at the urging of the International Association of Chiefs of Police.

Two developments at the turn of the century were instrumental in the Division's creation. The first was the adoption by criminal justice authorities of the use of fingerprints as a positive means of identifying criminals. The second was the increasing mobility of criminals. Efficiency and economy made it imperative that there be a national index where a single inquiry could be made to determine whether a person had a prior criminal record, rather than having to poll each of the numerous criminal justice jurisdictions throughout the United States to make that determination.

The Identification Division operates in the following manner: Federal, state and local criminal justice agencies voluntarily mail in arrest fingerprint cards and disposition reports, which the Division uses to compile its criminal history records. Inquiries regarding these records are received in the form of subsequent arrest and applicant fingerprint cards and name-check requests. Name-check requests are restricted almost exclusively for criminal justice agency use. The Division also acts as the national repository for fingerprint cards taken in connection with employment in the Federal Government, service in the U. S. Armed Forces, alien registration, and personal identification, including missing persons and unidentified living and deceased persons. As of January 1, 1984, the Division's fingerprint card holdings totaled 164.7 million cards, including 82.1 million criminal cards relating to 21.9 million persons, and 82.6 million civil cards relating to 34.5 million persons. The Identification Division presently services over 19,000 authorized users.

In 1972, Congress enacted Public Law (PL) 92-544, 86 Stat. 1115, which permits the FBI to exchange identification records, if authorized by state statute and approved by the Attorney General, with officials of state and local governments for purposes of licensing and employment. When a state statute requiring a check of FBI Identification Division records as a prerequisite to licensing or employment is enacted, the state agency having responsibility for implementing the law forwards a copy of the statute to the Identification Division with a request that it be approved as meeting the requirements of PL 92-544. The state statute is reviewed to determine if it contains specific language requiring a check of FBI criminal history records, and to insure there is no overriding public policy reason to preclude providing the service. Once the statute has been approved, the Identification Division will search fingerprint card submissions against its Criminal File and furnish all arrest information accompanied by final dispositional data, as well as arrest information less than one year old which is not accompanied by final dispositional data, to the agency which submitted the card.

The Identification Division closely coordinates this "Non-Federal Applicant Program" with each State Identification Bureau (SIB) since the fingerprint cards submitted under this Program must be initially processed by the respective SIBs. This is done for two reasons: First, it requires the state to review the card to insure it is being legitimately submitted and is correctly filled out; and, second, it allows the state to search the card through its own data base for disqualifying criminal history information, thereby eliminating the need for a national record check if such information is located at the state level. This requirement of having the fingerprint card searched at the state level is extremely important since nonserious arrest information is no longer stored by the Identification Division, but may still be stored at the state level. For example, drunk arrests, which are no longer maintained in the Identification Division, may be extremely relevant when deciding if someone should be employed as a school bus driver.

Another important aspect to remember is that the fingerprint cards submitted under the "Non-Federal Applicant Program" are subject to the Identification Division's new User-Fee System. At the behest of the Department of Justice and the Office of Management and Budget, on October 1, 1982, the FBI began charging a fee of $12 for each fingerprint card submitted for non-Federal, noncriminal justice employment or licensing purposes. Currently, the system is handling approximately 60,000 applicant fingerprint cards a month. The money collected by the system is, as the result of special statutory authority, being used to pay for the personnel, equipment, and other costs of providing the service.

At the present time there are over 250 state statutes which have been approved for access to our records. From October 1, 1982, until September 30, 1983, the Identification Division received and processed approximately 250,000 fingerprint cards submitted by state agencies for licensing and employment purposes. State utilization varies significantly and the approved state statutes deal with a number of different licensing and employment areas. Twelve states already have at least one approved statute requiring criminal history record checks on persons applying for employment in businesses or organizations where their employment would bring them into regular contact with children. These statutes include: school bus drivers; employees of school districts; school teachers; employees of medical professions and related occupations; employees of medical clinics; family/child counselors; employees of departments of human services; employees of departments of mental health and mental retardation; adoption agency employees; child-care workers and foster parents, trainees in youth counselor training programs, employees or volunteers with supervisory or disciplinary control over minors; and employees of welfare departments.

In each instance, when a state submits a fingerprint card for a licensing or employment purpose, the Identification Division makes the appropriate response to the requesting state regulatory agency and that agency then reviews the record, if any, for disqualifying arrest and/or conviction information. Some of the already approved state statutes specifically set out that the applicant cannot have any conviction for an offense involving moral turpitude. The state agency receiving the record has the latitude to either disqualify the applicant based on the information as it is stated on the record, or the agency may request additional clarifying data from the subject of the record prior to employing or issuing a license to the applicant. The decision to hire or license the applicant is left with the hiring or licensing agency and not made by the FBI.

Is There a Need for Additional Federal Legislation?

The FBI's view is that the underlying purpose, i.e., the protection of children, of the proposed new Federal legislation is worthwhile and commendable; however, both bills, i.e., S.521 and S.1924, may be unnecessary. The statutory tools needed to accomplish the purpose already exist. FBI fingerprint checks of employees of Federal and state facilities for the detention, correction, care or treatment of juveniles, are authorized by Title 28, United States Code, Section 534. In addition, Executive Order 10450 requires a fingerprint check of the Identification Division's Criminal File on all Federal job applicants. Therefore, Federal agencies operating juvenile detention, correction, care and treatment facilities should now be conducting such checks. Furthermore, FBI fingerprint checks of employees of state/local governmental and business organizations which have regular contact with children are also authorized under PL 92-544, if the states pass statutes requiring such checks and the Attorney General of the United States approves them. Therefore, what may be needed is not new Federal legislation, but rather a "grassroots" movement to more fully utilize the legislative tools already in existence. An important part of such a movement might be the passage of a "Congressional Resolution" bringing to the Nation's attention the magnitude of the problem and the need to fully utilize the legislative tools that are available to solve it. The FBI believes that a greater public awareness of this problem, coupled with a program to educate Federal, state and local authorities on how to utilize the existing legislative tools available to them, may fully accomplish the intended purpose of S.521 and S.1924.

Potential Problems With Any New Federal Legislation

If, on the other hand, Congress and the Administration decide that new legislation is needed, the FBI believes that a study should first be conducted to address the types of problems set forth below. As the success of any effort in this area depends on the cooperation of state and local governmental authorities, their views would be a vital ingredient in any such study.

First, the creation of a new centralized file of sexual assault and child-molesting arrests and convictions within the Department of Justice would result in costly duplication of what already exists in the Identification Division and the National Crime Information Center's Interstate Identification Index (III). The III is a Federal/state cooperative effort to decentralize to the states the collection, storage, and dissemination of state criminal history information and to create a national index for such records. The creation of a new Federal criminal history file for sex and child offenders would run counter to the purpose of the III. One of the prime motivations of this initiative has been the desire on the part of the states to control the dissemination of their own records, particularly in the area of employment and licensing. This is because there is a wide divergence in state laws and policies regarding the dissemination of criminal history records for employment or licensing purposes, ranging from complete unrestricted access to complete prohibition. Although the use of the III for employment and licensing checks is currently prohibited, a study is underway to evaluate its use in such situations taking into account the many questions that will have to be resolved, e.g., whether fingerprint card checks will be required as opposed to name checks, which state law will govern record dissemination when more than one state is involved, whether a fee will be charged and, if so, how much, etc. Therefore, since the III's use for facilitating the exchange of state records for employment and licensing purposes is currently being studied, the FBI would at this time oppose a legislative directive requiring the exchange of such records through III.

All criminal history records furnished by the states to the centralized file maintained by the Identification Division are disseminated under Federal laws and policies. The Identification Division disseminates these records to all Federal, state and local criminal justice agencies for law enforcement purposes, and the states have no quarrel with those disseminations. However, the Identification Division also disseminates such records to Federal Government agencies, the banking, securities and commodity futures industries, and state/local authorities for employment and licensing purposes, and some states object since their laws and/or policies would preclude such disseminations from their own state's files. On the other hand, each state does have the power to control the Identification Division's dissemination of records to employment and licensing authorities residing within that state's borders. Under PL 92-544, a state decides what types of employment or licensing within its borders will receive a national criminal history record check by enacting state statutes requiring such checks. For example, six states permit national criminal history checks on school teachers, four permit it for school bus drivers, and four allow it for day-care employees.

Since the submission of criminal history record information by the states is on a voluntary basis, any number of states may decide against submitting information to the new file because they believe that it would be duplicative of files and services already in existence, it would jeopardize the movement toward decentralization, and/or it would violate their own state dissemination laws and policies.

Second, there is the problem of how a new file on persons arrested for sexual and child-molesting offenses would be amassed. Existing Identification Division records and State Identification Bureau records, which can be accessed via III, would be a poor source of such records, since arresting agencies usually provide only elementary charge information (e.g., "sexual assault," "rape," "sodomy," "indecent act," or "carnal knowledge") without specifying that the offense involved an adult or a child. It should also be recognized that a large proportion of the crimes against children are committed by juveniles. Neither Identification Division records nor state records accessible via III, contain arrest information on juveniles unless the juvenile was tried as an adult. Moreover, many states seal the records of juveniles, making them unavailable for employment and licensing clearance purposes. If a "day one forward" record collection approach is adopted, it would take years to amass a sizable body of new records. Furthermore, an educational program would have to be undertaken to train thousands of criminal justice employees to add the fact that a child was the victim of a reported offense.

Third, there is the problem of name versus fingerprint checks. The FBI recommends that fingerprint checks be required as name checks can easily be defeated through the use of fictitious names. Since employment and licensing situations do not normally involve great urgency, adequate time should be allowed to perform the fingerprint checks. The average time for a fingerprint card to be processed through the Identification Division is about fourteen workdays.

Fourth, there is the problem of determining whether an organization is eligible to receive information from the new file. Effective accreditation procedures would be needed to insure that unqualified organizations do not gain access for improper purposes. The accreditation process would be difficult and costly to administer at the Federal level. It could be better handled at the state level as part of the state employment and licensing procedures. This would require the cooperation of the states and perhaps some Federal funding support to cover state expenses in administering the accreditation process.

Fifth, the FBI would oppose restrictions like the one requiring that the prospective employee have three or more arrests or a conviction on file before a dissemination of his/her record would be allowed. Such restrictions might prevent relevant and valuable information from reaching an employer and result in serious harm to a child.

Finally, the file searching task would be substantial. The Department of Labor (DOL) projected that in 1981, 66,000 people were seeking employment as kindergarten and elementary school teachers and 62,000 as secondary school teachers. In 1980, the DOL estimated that 30,000 individuals took employment as child-care workers. These figures just begin to scratch the surface, as they do not include many other job categories which have regular contact with children, e.g., school bus drivers, library workers, doctors, nurses, etc. Also not included are the many volunteer-type positions placing an individual in contact with children, e.g., Big Brothers and Big Sisters of America, Scouting groups, Little Leagues, etc. Many thousands of people fall into these categories. The relative size of the searching burden is better appreciated when it is pointed out that the Identification Division receives approximately six million fingerprint search requests annually from all sources, including both criminal justice and employment/licensing requests.

Conclusion

It would appear that the more expedient means of protecting our children from potential child molesters or sexual offenders is through an educational process to promote the use of existing legislation rather than attempting to enact new legislation without further study. As previously mentioned, a "Congressional Resolution" could be the spark for this national educational program aimed at making the public aware of the magnitude of the problem, while at the same time stressing the need to fully utilize existing legislative tools to solve it.

Mr. Chairman, this concludes my prepared statement. I hope that the information furnished will be of assistance to the Subcommittee. Mr. Lanning and I would now be pleased to respond to the Subcommittee's questions.

Senator SPECTER. I would like to call now Mrs. Brenda Smith, if she would step forward.

Mrs. Smith, as I understand it, you would request not to be photographed, to protect the identity of your son?

Mrs. SMITH. Yes, sir.

Senator SPECTER. And you are appearing here under a name which is not your own name?

Mrs. SMITH. Yes.

Senator SPECTER. Your reason for that is to protect your son?

Mrs. SMITH. Yes.

Senator SPECTER. Mrs. Smith, would you tell us something about yourself—where do you live, what do you do for a living, how many children do you have?

STATEMENT OF BRENDA SMITH, OXON HILL, MD

Mrs. SMITH. I am a housewife. I have been married for 16 years. I have two children, ages 12 and 3. I live in Prince George's County, and I attend Prince George's Community College. I have lived in Prince George's County for 13½ years.

Senator SPECTER. Would you tell us what happened to your 12-year-old son?

Mrs. SMITH. My son was sexually abused by his nursery school teacher, Robert Anthony McCormick, during the time he attended Cherub's Corner Nursery School. He was 5 and 6 years old at the time.

Mr. McCormick was arrested in May 1982 and charged with 15 felony counts of first degree sexual child abuse which involved my child and several others.

It is my understanding that when Mr. McCormick was indicted later, it involved children from Cherub's Corner and other schools between the years of 1975 and 1982, when he was a teacher at several day care centers and a substitute teacher for the Prince George's County school system.

Senator SPECTER. How old a man is the defendant?

Mrs. SMITH. He was 42 when he was arrested.

Senator SPECTER. Specifically, what position did he hold?

Mrs. SMITH. He was a nursery school teacher and a substitute school teacher in Prince George's County.

Senator SPECTER. Your son was 5 years old at the time?

Mrs. SMITH. Yes, sir.

Senator SPECTER. How many other children were involved with this man?

Mrs. SMITH. When he was indicted, I believe there were seven indictments.

Senator SPECTER. Specifically what was he charged with doing to your son?

Mrs. SMITH. There were three counts of child abuse. I do not know specifically what the charges were. One was for pornography. He took pornographic pictures.

Senator SPECTER. He took pornographic pictures.

Mrs. SMITH. Yes. And he fondled my son.

Senator SPECTER. He fondled his private parts?

Mrs. SMITH. Yes, sir.

Senator SPECTER. Anything else?

Mrs. SMITH. He wrote sexual fantasy books about different children, using their names in the book.

Senator SPECTER. Was there any physical contact between the defendant and your son besides the fondling?

Mrs. SMITH. Not that I know of.

Senator SPECTER. And what were the charges with respect to the other children, if you know?

Mrs. SMITH. I do not know.

Senator SPECTER. Do you know any of the specifics as to what the defendant was alleged to have done with the other children?

Mrs. SMITH. I know that he took several—I mean hundreds—of pornographic pictures. He would pose the children by themselves at the nursery school, or he would pose them together with other children in different ways. And he had a doll at the nursery that he would attach male genitals to and show the children.

Senator SPECTER. He had dolls that he attached male genitals to?

Mrs. SMITH. One doll, a fairly large doll. And he would also carve little wooden dolls of naked children with genitals.

Senator SPECTER. What happened to the defendant? Was he convicted?

Mrs. SMITH. Yes, he was.

Senator SPECTER. And what kind of a sentence, if any, did he receive?

Mrs. SMITH. He received a 15-year sentence, of which he only has to spend 5 years in jail.

Senator SPECTER. Is he in jail now?

Mrs. SMITH. Yes, he is.

Senator SPECTER. How old is your son now?

Mrs. SMITH. He is almost 13.

Senator SPECTER. To the extent that you can determine, what have the consequences been on your son as a result of this experience?

Mrs. SMITH. Well, he has several of the symptoms associated with a child who has been sexually abused. He cannot concentrate. He lives in a fantasy world, according to his teachers. He is a bedwetter.

Senator SPECTER. Still?

Mrs. SMITH. Yes.

Senator SPECTER. At 13?

Mrs. SMITH. Yes, sir. He has urinary tract problems.

Senator SPECTER. Do you think the urinary tract problems relate to this experience?

Mrs. SMITH. Yes, I do.

Senator SPECTER. Why do you think that?

Mrs. SMITH. Because it was at about that time that it started, and I took him to doctors, and the doctor's could find no specific cause, but I do attribute it to that after becoming aware of the abuse.

Senator SPECTER. Did this man have a prior criminal record that could have been disclosed had a criminal records check been made of him?

Mrs. SMITH. He did not have a criminal record, as far as I know.

Senator SPECTER. Did he have any kind of a record?

Mrs. **Smith**. He had been reported to the county health department and the county system on several occasions.

Senator **Specter**. Prior to the time your son went to the nursery school?

Mrs. **Smith**. No, not that I know of. During the time, he attended Cherub's Corner, yes; he was reported to the health inspector for P.G. County.

Senator **Specter**. If you know, what has happened to the other children who were victims of his sexual mistreatment?

Mrs. **Smith**. Some have been affected more than my son, and some, not as much.

Senator **Specter**. In what way were those affected more than your son?

Mrs. **Smith**. I believe the girls were affected much more than the boys.

Senator **Specter**. What did he do to the girls, if you know?

Mrs. **Smith**. I do not know specifically. I know that he did get more physical with them than he did the boys.

Senator **Specter**. Did he have sexual intercourse with them?

Mrs. **Smith**. No, not that I know of.

Senator **Specter**. What advice would you have for other parents to try to avoid the kinds of problems which your son has had?

Mrs. **Smith**. I do not know. Checking the nursery schools more carefully might help.

Senator **Specter**. How about for a parent to say to a child, "Be wary of anybody who wants to take your picture in a naked position"?

Mrs. **Smith**. Oh, yes.

Senator **Specter**. It is not something you would necessarily think of saying, and it would be a rather indelicate thing to say to a 5-year-old, and not an easy thing to say. But perhaps that is the kind of precaution which a parent ought to take—do you think so?

Mrs. **Smith**. Yes, I do—to be careful of anyone asking to take their picture or asking them to go somewhere with them—anything like that.

Senator **Specter**. Do you have a second child?

Mrs. **Smith**. Yes, I do.

Senator **Specter**. And how old is that child?

Mrs. **Smith**. He is three.

Senator **Specter**. Three now?

Mrs. **Smith**. Yes, sir.

Senator **Specter**. So he was not yet born at the time this incident occurred?

Mrs. **Smith**. No.

Senator **Specter**. Are there any effects on your 3-year-old as a result of what happened to your older boy?

Mrs. **Smith**. No, not——

Senator **Specter**. Are you fearful or concerned that there might be?

Mrs. **Smith**. I am very fearful. I will not put him in nursery school, because even if they are licensed, I do not think they check people out carefully enough. And even when it does come to their attention, they do not report it to the police.

Senator Specter. Well, Mrs. Smith, thank you very much for coming and testifying about this experience. In a sense, I am sorry that you are off-camera, because I think you have an important story to tell to other people and to let them know the kinds of problems that you have had, and a large element of prevention, really, is in this kind of information.

Thank you very much.

Mrs. Smith. Thank you.

[The prepared statement of Mrs. Smith follows:]

PREPARED STATEMENT OF BRENDA SMITH

Writing this impact statement on behalf of my son and the rest of our family is one of the most difficult things I've ever had to do. To express, in words, the anguish, disillusionment and injustice of what happened to my little boy when he was only five years old and what is happening now, as a result of it, is very painful for me. My only hope is that it will have some significant impact on the decision you face in deciding the fate of Mr. McCormick.

My son has many of the symptoms associated with a victim of sexual child abuse. The guilt I have about not recognizing these symptoms will remain with me for the rest of my life. My son is now twelve years old and from kindergarten through the sixth grade every one of his teachers have expressed concern about his constant daydreaming; as if in a world of his own. Imagine what his young mind has gone through, having to keep this terrible secret for the last seven years. He has been extremely self-conscious with a very poor self-image. He is a bedwetter, and even underwent surgery about three years ago to try to correct the problem---to no avail.

The night that the detectives telephoned me and told me that they had, in their possession, nude photographs of my little boy was only the beginning of the suffering our family has had to endure.

My son looked at photographs that were obviously him, and said, "That's not me!" for two hours. He did, finally, tell one of the detectives that the pictures were of him but he couldn't remember them being taken. Not until three months later did he come to me wanting to talk about what had happened. It was, at this time, that he told me about Mr. McCormick touching him and fondling him in his private parts; of the weekly photograph sessions that took place downstairs at Cherubs Corner Nursery School. Since the police have only three photographs of my son, what do you suppose has happened to all those photographs?! Some of the photos were taken of my son by himself and in other photographs Mr. McCormick would have my son posed with other children; both in ways to satisfy his own perversions. My son also told me the doll named Bobbie that had male genitals attached to it; of the threats made by Mr. McCormick if my son were to ever tell anyone about these things (Mommy and Daddy would get mad at him, the other children wouldn't like him anymore, that he wouldn't be Mr. McCormicks' special friend anymore, and the like). I am sure these things would not be considered life-threatening, but to a five year old child, they were very real and very frightening. I would also like to make it clear that everything that happened to my son took place at the nursery school. Mr. McCormick never babysat for my son and never took him on a camping trip. Why this was allowed to happen, for over two years, without anyone noticing, I find unbelievable.

To make matters worse, it was necessary to have my son transferred this year, from his assigned school, to another. Because of zoning, all the children(with the exception of three) that he had been going to school with, were assigned to a different school. Not until the night of the school orientation, two days before school was supposed to begin, did we know this. My son became very agitated and upset and said that he couldn't go to a school where he didn't know anyone. Both the counselor and myself attributed these actions to the distrust my son has for teachers and the need he has to be around familiar faces. The only way I managed to have my son transferred was to confide to the Pupils' Transfer Office the details of what had happened to my son. The transfer was granted, but I was informed that the reasons for the transfer would become a permanent part of my sons' school record. I only hope that this, too, will not cause my son harm in the future.

The total impact of what Mr. McCormick has done to my son may never be determined. It very nearly broke up our family due to the pressures and problems involved in this type of situation, and worse, a part of my sons' childhood was lost to him forever. He became an adult, in many ways, at the tender age of five.

There is nothing that can change what has happened to my child, and to so many other children, at the hands of Mr. McCormick. In addition to the horrendous crimes he committed against our children he violated the trust that was placed in him. He used this trusted position, as teacher to our children, to fulfill his own perverted desires. If there is a GOD in heaven, these crimes will not go unpunished; justice will be done, and Mr. McCormick will receive the maximum sentence possible. Even that will not make up for the suffering that the children and their families may endure for their entire lives....but, at least, there would be justice.

Senator SPECTER. I would like now to call Mr. Curt Livesay, director, central operations, office of the district attorney, Los Angeles, CA.

STATEMENT OF CURT LIVESAY, DIRECTOR, CENTRAL OPERATIONS, OFFICE OF THE DISTRICT ATTORNEY, LOS ANGELES, CA

Mr. LIVESAY. Thank you, Mr. Chairman.

My name is Curt Livesay. I wish to thank you for the invitation. Robert Philibosian, who is the district attorney of Los Angeles County, wishes me to pass on a good morning to you and a special thanks from him.

I appear today on his behalf. Regrettably, he just could not be here today, but is anxious to cooperate with you in any way in this field and others.

Senator SPECTER. Well, we appreciate your being here, and please give my best wishes to District Attorney Philibosian. I had occasion to meet with him a little over 1 year ago when we had Juvenile Justice hearings in Los Angeles. We are aware of the record that District Attorney Philibosian has made and the excellent background and reputation and work of the district attorney's office there.

We look forward to your testimony.

Mr. LIVESAY. Thank you very much.

I have reviewed the two bills to which you have referred today, Senator. We support those bills without reservation. We have some ideas of refinement that we would be pleased to share with your staff.

I have enjoyed the previous testimony this morning, and it has caused me to reflect a bit upon my experience in cases I have tried, having been in the office for almost 19 years now.

As you know, Senator, a very difficult problem in the criminal justice system is the burden of proof faced at time of trial, and that burden of proof uniformly is beyond a reasonable doubt.

Now, in the case of child molesters and others accused of sexual assault offense, the difficulty is multifold. It has to do with the traumatization of the victim. Earlier, you inquired specifically about the requirements for conviction of child molester. Although the State statutes differ, in California, touching is required. Although I am constrained by constitutional standards and justice ethics in not being able to discuss any particular pending case, in general terms, when there is no touching involved—and believe it or not, child molesters are sophisticated enough to know that when they molest children in a group, typically in a school setting, we have found that there is no touching of the child, but in some instances, a display of sexual conduct before the children—whether that is a sophisticated attempt to avoid State statutes, conviction or not, we are not sure, but there is a great deal of sophistication in these crimes.

Senator SPECTER. You are saying that under California law, if a child molester exposes himself or does something to himself, absent a touching of the child, there is no crime?

Mr. **Livesay**. Yes. And typically, the defense is there is no touching. There is a crime, but it is just not our definition of child molesting.

Senator **Specter**. Do you have a statute of contributing to the delinquency of a minor, corrupting the morals of a minor?

Mr. **Livesay**. Yes, we do. That is a misdemeanor in our jurisdiction. In the hypothetical you pose, there is a felony involved, and that could be indecent exposure—a difficult crime to prove generally, but in the specific instance, that would be the offense, as I see it.

Many of our cases involve allegations of both child molest and indecent exposure. We have a State statute on pornography, that is, where one deals in tapes and photos of sexual conduct.

Senator **Specter**. Mr. Livesay, have you had occasion to work on the case involving the alleged sexual abuse of some 125 children in the Virginia Martin Preschool in Manhattan Beach, CA?

Mr. **Livesay**. Yes, I have.

Senator **Specter**. Tell us about that case, if you would, please.

Mr. **Livesay**. Well, I would be rather constrained in the details in the case. We have several adults charged, only one of whom is a male. The allegations at this point number in the dozens. It has been publicly stated before my testimony today that perhaps there are hundreds of violations, stretching back as far as a decade.

Senator **Specter**. How many children are alleged to have been involved?

Mr. **Livesay**. More than 100 children.

Senator **Specter**. And what are the ages of those children?

Mr. **Livesay**. Those children at the time of the offenses were preschool ages, and that is in California younger than the age of 7.

Senator **Specter**. Without referring to any specific conduct attributable to any specific individual, what in general was alleged to have been done to those children?

Mr. **Livesay**. The allegations are child molest, indecent exposure, and trafficking in pornography. Basically, the allegations relate to the demonstration of sexual conduct before and in the presence of the children.

Senator **Specter**. When you say demonstration of sexual conduct by others—by adults?

Mr. **Livesay**. By adults.

Senator **Specter**. In the presence of the children?

Mr. **Livesay**. Yes.

Senator **Specter**. And that was the subject of photography?

Mr. **Livesay**. That was probably the subject of just a demonstration for the children. We are now investigating, with the cooperation of the FBI, whether or not there was photography that was transmitted in the course of interstate commerce.

Senator **Specter**. What would the point be of the molestation, or the motives of the individuals who would have sexual intercourse in front of children? What would they be looking for?

Mr. **Livesay**. Sexual gratification. Our statutes revolve around an intent to satisfy a sexual desire, a lewd and lascivious intent. We believe that demonstration was not for the traditional gratification of a sexual desire between or among the adults involved, but a demonstration to satisfy a perverted sexual desire by having the children witness the conduct.

Senator SPECTER. That would be a perverted sexual desire on the part of the participants to the sexual act?

Mr. LIVESAY. Yes.

Senator SPECTER. Was there a touching or an assault on the children at any time?

Mr. LIVESAY. Yes, we have so alleged, and it will be our position at trial to present evidence to demonstrate that there was on occasion a lewd and lascivious touching of the various victims.

Senator SPECTER. Was there actual intercourse or attempted intercourse between the adults and the children?

Mr. LIVESAY. I would rather not get into the specifics of one case. That proof would not be required for a conviction under our statute, however.

Senator SPECTER. How many defendants are involved?

Mr. LIVESAY. In one case, we have seven. In several other cases which we have prosecuted within the last few years, we have had two, three, number of defendants involved.

Senator SPECTER. What kind of a preschool institution is this—someplace where parents send children and pay to have them taken care of during the course of the day?

Mr. LIVESAY. Yes, it is. They are commonly called day care centers, or preschool centers.

Senator SPECTER. One factor of considerable interest to the subcommittee would be whether any of these perpetrators, or alleged perpetrators, could have been identified as a result of any prior criminal record had there been a record check.

Are you able to give us any guidance on that?

Mr. LIVESAY. Yes. The answer would be no. In the specific cases, the two or three, I believe, that have come to your attention in the media lately, no defendant presently charged has a record that would have been identifiable with arrests or convictions that would have been predictors of sexual misbehavior.

Senator SPECTER. What can be done in your opinion, Mr. Livesay, to prevent this kind of conduct? How do we go about dealing with it from a preventive point of view?

Mr. LIVESAY. Well, first is do exactly what you are doing, and that is starting with what I view as a very conservative step, and that is to require that all persons employed by governmental agencies charged with the custody of children have record checks.

Senator SPECTER. Do you think S. 521 is a good idea?

Mr. LIVESAY. Without reservation, we think it is a good idea. We think it should be broadened, and we appreciate that this might be an essential first step, and thereafter, other legislation could be passed

Senator SPECTER. How would you suggest broadening it?

Mr. LIVESAY. That we include not just governmental agencies charged with the custody of children, but any public or private agencies that deal with children in any custodial setting; that not only employees be the subject of a record check, but everyone who is there who might reside there, every volunteer who might appear on the premises in any connection with the children who are clients.

Senator **Specter**. What do you think of S. 1924, Mr. Livesay?

Mr. **Livesay**. We support that legislation, as well.

Senator **Specter**. Mr. Livesay, you have been in the district attorney's office, you say, for 19 years?

Mr. **Livesay**. Almost, Your Honor.

Senator **Specter**. Have you handled cases in the past involving sexual abuse, as for example, stepfather to stepdaughter?

Mr. **Livesay**. Yes, I have.

Senator **Specter**. Have you handled cases of sexual abuse natural parent to offspring child?

Mr. **Livesay**. Yes.

Senator **Specter**. How widespread do you think the problem is of sexual abuse in this country, with particular emphasis on California, where you have had your experience?

Mr. **Livesay**. Extremely widespread. We find that in many cases of juvenile delinquency, a substantial psychic problem of the juvenile offender stems from, or at least has as a contributing factor, sexual abuse. We find that so in a great many runaways, and especially so in, shall we say, not delinquents, but victimized children, status offenders; extremely widespread, practically—I would suggest and estimate that one in every four felonies, we find somewhere in the offender's background either an indication of some conduct indicating an inclination toward sexual misbehavior, or the sexual abuse as a contributing factor in his or her becoming a criminal.

Senator **Specter**. Now, you are saying that in one of four felonies, the perpetrator of the felonies has in his background having been a victim of sexual abuse?

Mr. **Livesay**. Having been a victim, or having in his background something to indicate that he is inclined to be an abuser.

Senator **Specter**. What would the statistical incidence be, in your experience, of being a victim of sexual abuse?

Mr. **Livesay**. I do not know. It is much less than that, but if we look at a limited number of offenses, let's say those offenses relating to what many call victimless crimes, I would suggest that the incidence of sexual abuse of the victim is very, very high. I speak in terms of prostitution, in terms of status offenders, runaways, in terms of juvenile delinquents who are female.

Senator **Specter**. Do you believe in your professional judgment that being the victim of sexual abuse is a key factor in leading that victim to a later life of crime himself or herself?

Mr. **Livesay**. Absolutely; without reservation. We find in child abusers, that is, natural parents or others who have children in a quasi-parental setting, that abusers have something in their background where they have been abused. That percentage is much, much higher.

Senator **Specter**. Do those who have been abused in a sexual context become involved in street crimes, like robberies and burglaries, as well as sexual offenses, or would they limit their involvement, as a generalization, to sexual crimes?

Mr. **Livesay**. I would not say it is a limitation. The sexual offender is more likely to have some sex abuse in his or her background. But we find that in our career criminals, that is, ones who are basically robbers and murderers, that a great many of them have been traumatized in childhood or in penal institutions, by some sex abuse.

Senator **Specter**. Mr. Livesay, are you familiar with Freud's writings on the subject of abuse of young females? There was recently an extensive article in Atlantic magazine where some independent research was done. Freud had advanced the theory and then had withdrawn it. There is a lot of historical controversy as to what extent Freud really believed it, and Atlantic magazine recently contained a very extensive research job where the author went into some detail explaining how Professor Freud's daughter did not want this particular line disclosed.

But Freud's writings go far to suggesting that sexual abuse of young women is a very, very frequent pattern in the lives of many young women. Are you familiar with that work?

Mr. **Livesay**. Yes. I am not personally so familiar as I am with a vicarious recognition of it through experts who have testified in cases I have tried.

Senator **Specter**. What is your own judgment as to the—well, first of all, as a basis, what have the experts in the cases you have tried had to say about that subject?

Mr. **Livesay**. Yes, that sexual abuse of females is much more widespread than ever reported to justice authorities. As a matter of fact, until the last decade, many jurisdictions had strict limitations on what information could be shared with police and prosecutors, and we discovered that a great deal of sexual abuse of females had been reported to social work agencies and not reported to the police. Now, in our jurisdiction—and I might say that perhaps in the last decade in this area, we have advanced more than the hundred or so years that we have had the State of California—that as more cases are reported, and as people become aware that the justice system does have a reasonable response to these cases, the frequency of reporting grows. And now, we are at a point where we think that perhaps one in four of the offenses of severely traumatized children might be reported.

Senator **Specter**. At what ages does this sexual abuse of the young female child occur?

Mr. **Livesay**. It can start, Your Honor, as early as infancy and carry through into and beyond 18 to 21 years old; it depends. I have noticed a pattern—and I noted in previous testimony something that reminded me—I have tried cases where, in one case, the natural father had begun molesting his daughters when they were 6 or 7, and as Mr. Lanning stated, it was a process of seduction over a number of years. I recall one case particularly on a retrial where a natural father had begun seducing his daughter at about the age of 6 or 7——

Senator **Specter**. When you say "seducing," what was the conduct involved?

Mr. **Livesay**. A general parental contact that basically escalated into the father and his daughters taking baths and showers together that is gradually increasing over a period of years to the point that he would touch with his erect penis her private parts and other areas of her body.

It was a typical case. I inherited the case on a remand from the court of appeals, where the father, who had suffered a conviction of manslaughter of the mother—that is a lesser degree of homicide in our jurisdiction—and a conviction of incest. His incest conviction was reversed; I inherited it, and on the retrial became familiar with the victim and her school psychiatrist and psychologist. And the difficult decision for a public prosecutor, Your Honor, as you well know, in a case like this, is whether to proceed with the criminal trial and cause this victim to resurrect the trauma of what happened to her, testify against a father who had been away in State prison and whom I am sure that she would like to forget, and thereby erase and eradicate all the good work that had been accomplished by the school authorities, the psychiatrist, and the psychologist. We attempted to use a middle ground. I presented the case, and the defendant was acquitted.

Senator SPECTER. You did not have the victim testify?

Mr. LIVESAY. We did have the victim testify, but in a way that was what we thought would be sufficient for the jury to understand and believe, but not——

Senator SPECTER. What did she testify to?

Mr. LIVESAY. She testified to the offense, but would not testify to the time, and when I inherited this case, she was 12 years old. And it was on that basis that the jury would not convict.

Senator SPECTER. Why did you leave out the time? How did that make it easier for her?

Mr. LIVESAY. Well, because in the period of the time, the psychiatrist—and we alleged in our allegation between, and we set within 1 year—the psychiatrist thought that she had repressed the events surrounding these, and that by going back and at that time, through hypnotism and other methods, causing her to resurrect those might destroy forever the good work they had done. So, we proceeded on the basis, knowing there was some ambiguity in the period of time, and the jury just did not think that was sufficient.

Senator SPECTER. Mr. Livesay, are you familiar with the case out of California involving the 19-year-old man who was charged with killing his father and entered a guilty plea, where the father had sexually molested a female child in the family?

Mr. LIVESAY. Yes, I am.

Senator SPECTER. What were the circumstances of that case?

Mr. LIVESAY. The circumstances of that offense were that——

Senator SPECTER. Was that in your office?

Mr. LIVESAY. Yes, it was, and it was in the Pomona branch of the Los Angeles Superior Court.

Senator SPECTER. Is there any correlation between the very heavy incidence of these kinds of cases and your particular jurisdiction?

Mr. LIVESAY. I believe there is, Your Honor.

Senator SPECTER. Why do you believe there is?

Mr. LIVESAY. Well, when I was at UCLA, I had a sociology professor——

Senator SPECTER. I phrase that question in the most nonleading way possible, or nonconclusionary way possible.

Mr. LIVESAY [continuing]. Who described California as being populated by misfits from the East. And one of his theories was——

Senator SPECTER. Not native born.

Mr. **Livesay** [continuing]. There are only a few, and surprisingly, not too many of them are identified as pedophiles—one of his theories was that the misfits go West. He started with the settlement of America and then pointed to the Pacific, which is only 5 miles from UCLA. That is our jurisdiction.

We have a very nice climate, we have a great deal of freedom, and we have the world's misfits.

I do not know if the incidence of pedophilia is greater there than in other populous urban areas. I know it is far too high——

Senator **Specter**. An assistant district attorney does not have to run for election under your laws, right?

Mr. **Livesay**. That is correct. However, I hold an unclassified civil service spot, Your Honor.

I am familiar with the case that you cite——

Senator **Specter**. Well, do you really feel there is something in the mobility and in the migration which gives the Los Angeles area a great degree of problem in this particular line?

Mr. **Livesay**. Yes, Your Honor. We have a clash of cultures; members of practically every culture and subculture in the world are there. It is a highly mobile environment, and that is one of our problems of identification. It is one of the problems we have when we submit fingerprint cards to Mr. Mercer and his group. We have multiple offenders who offend each time under another name.

Senator **Specter**. Tell me about the specific case.

Mr. **Livesay**. You asked about the case where a man of 19 was charged with manslaughter in the death of his father. It started as a special circumstance case, and in California, the case came to my attention because I am in charge of all such cases in our jurisdiction. The matter involved a young man who theoretically was lying in wait. As I recall, his weapon was a shotgun. It could have been a high-powered rifle, but I believe it was a shotgun. He was waiting adjacent to a boat as his father returned that day. As the court records show—and I do not speak from anything that is confidential or otherwise in the prosecution file—it is just public information in the court record—the father had traumatized the family over the years, by sexually abusing as I recall, two daughters——

Senator **Specter**. How old were they?

Mr. **Livesay**. The oldest one was an adult and, I believe, married, and perhaps had a family of her own. She is out of the household.

Senator **Specter**. And the abuse occurred while she was a child in the household?

Mr. **Livesay**. Yes, and as she grew up.

Senator **Specter**. What age span?

Mr. **Livesay**. As I recall, Your Honor, the abuse started at about 10 to 11 and continued up through the teenage years.

Senator **Specter**. What did the abuse consist of?

Mr. **Livesay**. As I understand it, sexual intercourse and otherwise. As she was younger, it was not intercourse at first, but it became sexual intercourse as she grew and developed.

Senator **Specter**. There was a second daughter who was abused?

Mr. **Livesay**. Yes.

Senator **Specter**. And the age of the second daughter?

Mr. **Livesay**. As I recall, the second daughter was in the area of puberty, 13 or 14, when the abuse began.

Senator **Specter**. What was the abuse there?

Mr. **Livesay**. As I understand it, it was at the stage of sexual intercourse now.

Senator **Specter**. Was the mother living with the family?

Mr. **Livesay**. Yes.

Senator **Specter**. Did she know about this, as you understand it?

Mr. **Livesay**. As I recall that case, she had suspicioned the conduct, had become aware of part of it, but through a series of events, was unable to do anything about it.

Senator **Specter**. The young man, 19, was charged with homicide?

Mr. **Livesay**. Homicide of the offending father.

Senator **Specter**. And he entered a guilty plea?

Mr. **Livesay**. Yes; he did.

Senator **Specter**. And he got a sentence of doing some public service for 2 years?

Mr. **Livesay**. Yes. His plea was to manslaughter. He received a felony sentence with a condition of probation, that he do some public service with a designated group.

Senator **Specter**. When I read about that case, Mr. Livesay, I wondered two things. I wondered why he was prosecuted. It is a tough decision for a prosecutor, even with the wide range of discretion that a prosecuting attorney has not to prosecute. Did you consider not prosecuting in that case?

Mr. **Livesay**. Yes. The prosecution proceeded basically because of the timing and the manner in which the son killed his father. It was our theory that the killing did not occur at the time that anyone was being abused, or precisely at a time when there was any physical threat to himself, his mother, or his sister.

Senator **Specter**. No intercession to save a life or to stop an assault, and no hot blood?

Mr. **Livesay**. That is correct, Your Honor. That was our theory. Of course, the hot blood could be argued by the defense, even though there was some delay.

Senator **Specter**. With respect to the sentence, did your office oppose the terms of probation?

Mr. **Livesay**. Yes, we did. I believe, as I recall the words of the prosecutor in that case, after the sentencing and after we had suggested that the offender be referred to the State prison authorities for a psychiatric 90-day study before the judge mete out any sentence. After we lost that, and the sentence was handed down, our prosecutor, I thought wisely and reasonably, stated to media representatives that we opposed that sentence, however, it is a reasonable sentence.

Senator **Specter**. Did you recommend a jail sentence in that case?

Mr. **Livesay**. We recommended that at that stage, there merely be a psychiatric study. That entails a lockup, 90-day jail sentence.

Senator **Specter**. Mr. Livesay, what would you recommend that the Congress do, if anything, in the problem of sexual abuse of children in this country?

Mr. **Livesay**. I recommend it do all of the above, and I mean by that, anything that might have any rational nexus to the identification of pedophiles, any program that would enhance the freedom of parents to deal with children in a rather sophisticated way. I think that Government should assume the role of sharing the burden of guilt that parents have when a child is molested, either by a natural parent, a step parent, or a stranger, or anyone in a custody setting.

You see, parents have a feeling of nowhere to go, tend to blame themselves, when it just should not be.

So first, I would suggest the step that you are taking, a concrete law that would require record checks for those dealing in Government agencies and custody settings of children; second, that you expand that as the time and the environment might be appropriate, and that any program that augments family service community care centers be funded and, to that extent, regulated.

Senator SPECTER. Thank you very much, Mr. Livesay. Is there anything you would care to add?

Mr. LIVESAY. Just that earlier it was mentioned about special classes on teaching children how to avoid sexual abuse. I would like to share with your staff a Los Angeles Times article of April 8 on the very issue of teaching children how to say no. I think it is very timely.

And again, thank you very much for the invitation, and we stand ready to assist in any way that we might.

Senator SPECTER. Thank you very much for joining us. We very much appreciate your coming, and thank you for your very helpful testimony.

The hearing is adjourned.

[Whereupon, at 10:55 p.m., the subcommittee was adjourned.]

FEDERAL ASSISTANCE TO STATES TO PREVENT THE ABUSE OF CHILDREN IN CHILD CARE FACILITIES

TUESDAY, SEPTEMBER 18, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON JUVENILE JUSTICE,
Washington, DC.

The subcommittee met at 9:45 a.m., in room 628, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Present: Senators Hawkins, D'Amato, and Grassley.

Staff present: Mary Louise Westmoreland, chief counsel and staff director; Scott Wallace, counsel; Tracy McGee, chief clerk; and Lynda Nersesian, counsel to Senator Grassley.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator SPECTER. Good morning, ladies and gentlemen.

I regret the delay in beginning these hearings this morning. We will proceed at this time on our series in hearings relating to child pornography, child molestation, a very serious problem which has gripped our Nation, to see what can be done about coping with this problem in terms of understanding the scope and extent of it, as we have seen the matter expand and become evidence from one coast to the other.

During the work which I had done years ago as district attorney of Philadelphia, I have seen the problem of sexual abuse of children. It is my sense that there is more of it today than in the 1960's and in the 1970's, although it simply may be that more of it is coming to light at this time.

There were interesting proceedings before the House of Representatives yesterday, when testimony was offered from Key McFarland, who has testified before this committee, and the children's caucus about a child predator network in the United States, and one of the things which we are trying to do is to see how to cope with it in terms of identification of child molesters.

I have had legislation before the Senate for 2 years now, S. 521, which would require a record's check on people who work with children, an idea which emerged from hearings on abuse of juveniles in the Oklahoma Detention Centers. There are other legislative proposals. Senator Grassley, Senator Hawkins, and Senator

D'Amato all have ideas. We will hear from them during the course of these proceedings, but we are trying to cope with this problem and to understand its extent and how we might deal with it.

If it is not possible to see to it that child molesters who are in the field where they do not have records, so we cannot prevent their dealing with children, at least once we have identified them, we can make sure that they do not repeat that kind of an offense.

At this time I would like to turn to two of my distinguished colleagues, ladies first perhaps: Senator Hawkins, who has been so active in the field of missing children and has sat on a number of occasions with the Juvenile Justice Subcommittee. Even though it is an extra assignment, she takes on a great many extra assignments. So I am pleased to have her with us today and look forward to her comments.

STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. Thank you, Mr. Chairman.

It has been a great pleasure for me to work with you over the last 4 years in the area of children. We have successfully accomplished a lot of things, but I feel we have a lot more to do to protect our Nation's children.

For too long we ignored this ugly issue. We pretended it did not exist or at least did not happen in our city or my city. It did not happen in my neighborhood. It did not happen to my children, was the attitude of the public, and if anything positive can be said to have emerged from the recent, terrible revelations of day care child abuses it is that the public's increased awareness of the problem has fostered an atmosphere in which I believe reform is now possible.

The bill that you filed 2 years ago, and other bills that have been languishing, probably will now have some impetus because we are no longer whispering about this issue. Now we are talking out loud about the criminality of child abuse.

In this session of Congress, we were able to garner enough votes to enact your tough, new obsenity laws to protect our children from sexual exploitation, from pornographers. We restored the disastrous cuts in the Child Abuse Prevention and Treatment Act, and as you know, we are close to enactment in the conference of Missing and Expoited Children's Assistance Act, but so much more remains to be done.

The small amount of funding earmarked for sexual child abuse programs is criminal in itself. It is indicative of the low priority traditionally given to programs just serving children. Children should be our top priority, and our budgetary priorities should be realigned to indicate our feeling of importance in our future because children are our future.

I personally believe that additional funding and additional reforms are needed on both State and Federal levels. We should start working together in a coordinated effort instead of addressing blame for the terrible situation that faces us today.

Earlier this year, I participated in your congressional hearings on the legal rights of sexual abuse victims, and as a child victim of assault myself, I was familiar with the lack of protections afforded to children 50 years ago, and I am still saddened and astounded to learn that there is not much progress that has been made in the intervening years.

Witnesses there testified that allegations of sexual abuse were not properly investigated; that prosecutors still are unwilling to take a case to court without adult corroboration. Children are still harassed and traumatized during the legal proceedings, and a child's testimony is still given less weight than the accused adult molester. These inequities must be corrected.

Rarely a day goes by that we do not learn of yet another case of sexual child abuse in a child care or babysitting service. Child abuse and sexual child abuse is not new, nor is it confined to child care centers. However, I believe that the increase in working parents and single-family households has increased the use of child care centers and babysitting services and have, thus, increased the access and opportunity for a child molester to sexually abuse our children.

Now, we have the responsibility as elected officials to take whatever action is possible to protect our children, and I feel that a key component of any State statutory reform should be the criminal records check. I know that the chairman of this committee and the Senator from Iowa, Senator Grassley, share my interest in the need to run a criminal background check on these individuals to whom we entrust our children.

In Florida, criminal background checks are required for lawyers, real estate brokers, liquor salesmen, firefighters and paramutuel betting officers. Think about that for a moment, and at least the same cautions should be exercised for teachers, child care employees, and others who have supervisory positions over our kids.

In Florida, our State legislature recently enacted a requirement that new teacher applicants undergo fingerprint criminal records checks as part of their licensing procedure. The reform was prompted by an exposé about the bad apples in the Florida school system who held positions of influence over our children despite their convictions for child abuse or drug trafficking.

But the important thing is that the legislature exempted present teachers in order to pass that bill. Well, the vast majority of teachers are presently in the system. I think the present teachers, if they have nothing to hide, should undergo this same criminal records check.

Now Florida is considering calling a special session to consider expanding the criminal records check to child care employees, and this, too, was prompted by tragic revelations regarding convicted child molesters who were operating babysitting services and child care agencies and abusing the children entrusted to their care.

As I mentioned, I consider fingerprinting, criminal records check, and I add fingerprinting because that seems to be something that we are not putting in the bill by name, but I want fingerprinting criminal records check to be the key component of any child-protection legislation that we enact, and I urge my colleagues not to narrow their focus on this one issue because so many more reforms are desperately needed.

This very subcommittee held some disturbing and tragic hearings on the lack of legal rights afforded to the victims. You heard testimony of families who wanted to protect their children, but were prevented from doing so by a legal and a judicial system that is biased in favor of the molester, and does not give credence to the kids' testimony, regardless of the truthfulness of the statement.

Now, over 2 years ago the Young Lawyers Division of the American Bar Association, operating under a grant for the National Center on Child Abuse and Neglect, reported their recommendations regarding legal innovations that should be made in order to protect the rights of child victims of sexual assault. This report is 2 years old.

Their recommendations were based on extensive research and analysis of the current legal and judicial system, and although the need for these reforms is well documented, only a handful of States has considered or enacted these statutory reforms.

I sponsored a Senate concurrent resolution—Senate Concurrent Resolution 120—which expressed the sense of the Congress that State legislatures should develop and enact legislation designed to provide child victims of sexual assault with protection and assistance during administration and judicial proceedings. The Senate Governmental Affairs Committee plans to act on my resolution on the 18th of this month, and I am hopeful that Congress will go on record as supporting the need for State reforms before we adjourn.

Similar attention and consideration should be given to the need for reforms in regulation of child care agencies and providers. A convicted child molester in Florida who has been operating a babysitting service would not have been caught by a licensing requirement for criminal records check because under Florida law and most State laws child care centers that care for less than five children have been exempt from licensing and regulation.

Now, this convict avoided regulation by keeping his services limited to five kids at a time, but over 200 children had been entrusted to his care during the 2 years his babysitting service was in operation. Law enforcement officials are still trying to ascertain exactly how many children were sexually abused.

Federal standards and guidelines for child care are so controversial. I just left Miami in Dade County where they are discussing this, and it is very controversial in that county. But I included this provision in my child protection legislation, S. 2973, because too many States are doing nothing. They are not adequately regulating these establishments, and it is time we realized the main beneficiary of child care should be the child.

We should insist on quality of care, as well as convenience.

Your subcommittee has documented the need for reforms in this area, and I hope that this window of opportunity, this positive atmosphere for reform will carry over until the 99th Congress where we can enact the reforms necessary to protect your kids.

I plan to introduce legislation in the next Congress regarding both child care and sexual child abuse.

Mr. Chairman, I want to commend you for your interest and intentions in this area. Our thoughts are very similar. We made a good team working on the Missing Children Act, the Missing Children Assistance Act, the Child Protection Act, Runaway Youth

Centers, and the reauthorization of the Juvenile Justice and Delinquency Act, and I look forward to working with you and your staff to enact the additional reforms that are necessary to protect our children in this country.

Thank you for the opportunity.

[The prepared statement of Senator Hawkins follows:]

PREPARED STATEMENT OF SENATOR PAULA HAWKINS

Mr. Chairman, thank you for permitting me to testify today. I know of your interest in the issue of sexual child abuse and of your efforts to protect our nation's children. For far too long, we have ignored this ugly issue, preferring to pretend that it doesn't exist, or at least doesn't happen in our towns, in our neighborhoods, to our children. If anything positive can be can be said to have emerged from these terrible revelations, it is that the public's increased awareness of the problem has fostered an atmosphere in which reform is possible. This session of Congress, we are able to garner enough votes to enact your tough new obscenity laws to protect our children from sexual exploitation from pornographers, we have restored the disastrous cuts in the Child Abuse Prevention and Treatment Act, and as you know, are close to enactment of the Missing and Exploited Children's Assistance Act. But much much more remains to be done. The small amount of funding earmarked for sexual child abuse programs is criminal in itself. It is indicative of the low priority traditionally given to programs serving children. Children should be our top priority and our budgetary priorities should be realigned to indicate their importance in our future.

I personally believe that additional funding and additional reforms are needed on both the state and federal levels. We should start working together in a coordinated effort instead of assessing blame for the terrible situation that faces us today. Earlier this year I participated in your Congressional hearings on the legal rights of sexual abuse victims. As a child victim of sexual assault, I was familiar with the lack of protections afforded to children 50 years ago, but I was saddened to learn of the little progress that had been made in the intervening years. Witnesses testified that allegations of sexual abuse were not properly investigated, prosecutors are still unwilling to take a case to court without adult corroboration, children are still harassed and traumatized during the legal proceedings, and a child's testimony is still given less weight than the accused adult abuser. These inequities must be corrected.

Rarely a day goes by that we don't learn of yet another case of sexual child abuse in a childcare or babysitting service. Child abuse and sexual child abuse is not new, nor is it confined to childcare centers. However, the increase in working parents and single-family households has increased the use of childcare centers and babysitting services and thus increased the access and opportunity for a child molester to sexually abuse our children. We have a responsibility to take whatever action is possible to protect our children.

I feel that a key component of any state statutory reform should be a criminal records check. I know that the Chairman and the distinguished Senator from Iowa, Senator Grassley, share my interest in the need to run a criminal background check on those individuals to whom we entrust our children. In Florida, criminal background checks are required for lawyers, real estate brokers, liquor salesmen, firefighters and parimutuel betting officers. At least the same caution should be exercised for teachers, childcare employees and others who have supervisory positions over our children. In Florida, our state legislature recently enacted a requirement that new teacher applicants undergo fingerprint criminal records checks as part of their licensing procedure. This reform was prompted by an expose about the "bad apples" in the Florida school system who held positions of influence over our children despite their convictions for child abuse or drug trafficking. Florida is considering calling a special session to consider expanding the criminal records check to childcare employees. This too, was prompted by tragic revelations regarding convicted child molesters who were operating babysitting services and childcare agencies and abusing the children entrusted into their care.

As I mentioned, I consider the fingerprinting criminal records check to be the key component of any child protection legislation that we enact. But I urge my colleagues not to narrow their focus on this one issue. Many more reforms are desperately needed if we are to adequately protect our children. This very Subcommittee held some disturbing and tragic hearings on the lack of legal rights afforded to the victims of sexual abuse. You heard the testimony of families who wanted to protect their children but were prevented from doing so by a legal and judicial system that is biased in favor of the molester and does not give credence to the child's testimony regardless of the truthfulness of his statement.

Over two years ago, the Young Lawyers Division of the American Bar Association, operating under a grant for the National Center on Child Abuse and Neglect reported their recommendations regarding legal innovations that should be made in order to protect the rights of child victims of sexual assault. These recommendations were based on two years of intensive research and analysis of the current legal and judicial system. Although the need for these reforms is well documented, only a handful of states have considered or enacted these statutory reforms. I have sponsored a Senate concurrent resolution, S. Con. Res. 120, which expressed the sense of the Congress that the state legislatures should develop and enact legislation designed to provide child victims of sexual assault with protection and assistance during administrative and judicial proceedings. The Senate Governmental Affairs Committee plans to act on my resolution on the 18th of this month, and I am hopeful that Congress will go on record as supporting the need for these reforms before adjournment.

Similar attention and consideration should be given to the need for reforms in regulation of childcare agencies and providers. The convicted child molester in Florida who was operating a babysitting service would not have been caught by a licensing requirement for criminal records checks, because under Florida law, and most state laws, childcare centers that care for less than five children at a time are exempt from licensing and regulation. This convict avoided regulation by keeping his service limited to five children at a time, but over 200 children were cared for by him during the two years his babysitting service was in operation. Law enforcement officials are still trying to ascertain how many children were sexually abused. Federal standards and guidelines for childcare is a controversial concept, but I included this provision in my child protection legislation, S. 2973, because too many states are not adequately regulating these establishments. It is time we realized that the main beneficiary of childcare should be the child, not the working parent. We should insist on quality of care as well as convenience.

Your subcommittee has documented the need for reforms in this area. I hope that this window of opportunity, this positive atmosphere for reform will carry over until the 99th Congress, so we can enact the reforms necessary to protect our children. I plan to introduce legislation in the 99th Congress regarding both childcare and secual child abuse. Mr. Chairman, I know that our interests and intentions in this area are very similar. We have made a good team working together on the Missing Children Act, Child Protection Act, Missing Children's Assistance Act, runaway youth centers and reauthorization of the Juvenile Justice and Delinquency Prevention Act. I look forward to working with you and your staff to enact the additional reforms that are necessary to protect our children against this heinous crime.

Senator **Specter**. Thank you very much, Senator Hawkins.

I turn now to my distinguished colleague, the Senator from New York, Senator D'Amato, who has been a leader in so many fields and recently spearheaded the drive, along with Senator Hawkins, myself and others, for Federal assistance for prisons. Senator D'Amato has been very active in the entire criminal justice field and has some very important ideas on the problem of protecting children from sexual molestation in day care centers.

I am very pleased to turn to Senator D'Amato at this time.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator **D'Amato**. Thank you very much, Mr. Chairman.

Let me commend you for your insight, and foresight, in introducing legislation before the horror, the monumental horror, of what we have begun to see reached the present state. You were ahead of the problem.

Those of us in the Senate who have worked with you are gratified by your leadership and by the strong background that you bring in terms of your prior legal service, not only as a distinguished attorney, but as a distinguished prosecutor of the great State of Pennsylvania and the city of Philadelphia.

Let me also commend, Mr. Chairman, the fearless prosecutor who was unafraid of the establishment that wants to hush this up. There are those who are more interested in protecting jobs and those who are more interested in protecting the status quo than in saying, "Let's protect these youngsters."

I am talking about a district attorney who does not back down to anyone and who has gone out carefully, painstakingly, and who has not sought headlines. The facts that he and his staff have uncovered and the indictments that have followed are indeed shocking. In his words, they are only the tip of the iceberg. I am talking about District Attorney Mario Merola from the Bronx.

We need to get the facts out to the American public, then build a consensus that we are more concerned with protecting our children than getting into some of the most incredibly dilatory arguments that are aimed at putting aside these bills and letting the passing storm, so to speak, go by. "Oh, we don't want fingerprinting. That gets into somebody's constitutional liberties." Nonsense. "Background checks, you know, we shouldn't have background checks." Nonsense.

People who have not even graduated the eighth grade, who have criminal records, who have been convicted of incredible crimes, are being entrusted with the responsibility of caring for our children. Yesterday the National Association for Child Care Management opposed legislation that Senator Hawkins and I have introduced because they say it may cost $12 to $38 per employee to screen them.

That is absolutely scandalous. They ought to be ashamed of themselves, and if their legislative representative is here, do not let me hear that. It is just an incredible thing.

Twelve dollars for a background check or $38; so, therefore, we should not do it. What does it take for you to say, "Wake up. Take a look at what is happening"?

They testified in yesterday's House hearings. I am not going to read my entire statement because I get angrier every time I read this, but they said, "Well, you know, these centers, they have glass partitions, windows where people can look in to see that the children are not being abused." Now, come on. Nobody abuses children in the middle of the classroom. They take them into those areas where they are not visible. They take them into the bathrooms and into other places.

What are we saying? Are we really saying that this problem does not exist? The association ought to be ashamed of yourselves, absolutely, and they represent 250,000 children and hundreds and hundreds of day care centers. I will tell you that that is shocking.

I have worked for day care legislation and worked to prevent the cutoff of funds and worked with Senator Hawkins and Senator Specter in this area. So no one is going to accuse me of not being a friend of day care, and understanding the needs.

But we had better make sure that we can assure the parents that their children are going to be protected. So this legislation, S. 521 which Senator Specter has introduced, and S. 2973 that Senator Hawkins and I have worked on, are long overdue.

We had better stop quibbling about fingerprinting, et cetera. Senator Hawkins has pointed out that in some States, that is required for liquor salesmen. They require it in banks. These are not unreasonable requests: To see to it that there are background checks; and, if people have committed crimes, that the day care centers are able to look to a national registry because of the people who move from one State to another.

This situation is a national scandal, and the legislative proposals that we have put forth are needed. I do not suggest to you that there may not be certain amendments that are necessary to make them more effective and to take care of people's legitimate concerns, but our basic proposals are absolutely necessary, Mr. Chairman.

I commend you for these hearings, and again, I commend you for being ahead of the problem in introducing your legislation. It is unfortunate that the Congress has not adopted your legislation prior to these events. Maybe some youngsters would have been spared.

I would hope that we move forthrightly.

Let me suggest that the Federal Government make available about half a billion dollars for day care, and I am very zealous for States' rights, but I want to suggest to you that there should be minimum standards in whatever bill is reported out, and if day care centers and States do not comply within a reasonable period of time, we should cut off that money. That is the only thing they understand, and that is what we have to do.

Let me commend you, Mr. Chairman, for your hearings and for your leadership in this area.

[The prepared statement of Senator D'Amato follows:]

PREPARED STATEMENT OF SENATOR ALFONSE M. D'AMATO

Thank you for the opportunity to testify today on the National Child Protection Act. Senator Hawkins and I introduced this legislation 11 days ago to combat an exploding national tragedy of child abuse at day care centers.

The primary purpose of day care centers is to provide quality care for the children of millions of working mothers and fathers. Projections indicate that, by 1990, more than 80 percent of children under 6 years of age will have working mothers and that 50 percent of these children will require formal day care.

The fact that abuse of children takes place in day care centers is a bitter irony. One of the purposes of State-funded centers is to provide a safe refuge to children who are abused at home.

It would be monstrous to take a victim of child abuse and put him or her in a center without doing all that we can to assure that this child is not victimized again. It is monstrous, but it happens.

The insidiousness of the evil we are confronting is revealed when you look at how easily the grossest crimes against children are hidden. Those who abuse and sexually molest children rely on the innocence and the fears of their victims to escape detection. Far too often, by the hundreds of thousands, they succeed.

In 1982, 929,000 cases of child abuse and neglect, involving 1.4 million children, were reported. Seven to ten percent of these cases—or between 65,000 and 93,000—involved sexual abuse of children. If, as the New York State division for youth reports, there are 4 times more cases than are actually reported, then as many as half a million children are sexually abused each and every year.

I am outraged by the testimony of the National Association for Child Care Management at yesterday's House hearing on this subject. The hearing was conducted by the House Ways and Means Subcommittee on Oversight and the Select Committee on Children, Youth, and Families.

The association testified that "the imposition of regulations may divert our attention or worse, falsely assure all of us who care so deeply that we have done something valuable to protect our children."

The association also complains about the cost of a background check on individual employees. At yesterday's House hearing, there was conflicting testimony over whether the cost of an FBI background check on day care employees is $12 or $38 per employee. The association claimed that the impact of these costs on a single child care center's budget can be "devastating."

I submit that the cost of failing to conduct these background checks is infinitely greater and more devastating for those we should care most about, our children. We cannot put profit before the safety of our children. Our children are definitely worth the cost—whether it be $12 or $38.

An organization whose membership includes 200 for-profit day care companies serving more than 250,000 children should be the first one to speak up in support of our bill. Instead, the association's statement seems bent on quibbling about a few dollars to protect our children.

It also seems intent on missing the essential point about child abuse, namely, that these crimes are committed in secrecy. Let me read you an excerpt from their statement:

"Most classroom doors have windows, partitions are situated to provide accessibility and easy view for adults, and the floor plan often allows for visibility from one classroom to another as well as to the playground."

Do they expect us to really believe that child molesters will choose to commit their crimes in front of a window? What about the children who are molested and abused in the bathrooms, or behind the partitions?

We had better begin to find out the facts. After recent child sexual abuse cases in Chicago; Minneapolis; Cullman, Alabama; Manhattan Beach, California; and the Bronx, New York, the time for reliance on guess work is over.

Because child abuse is one of the most underreported and easily hidden crimes and because child molestation is one of the most despicable crimes, our bill, the National Child Protection Act, puts a premium on reporting, punishing, and preventing these crimes.

The National Child Protection Act requires that, in order to receive Federal funds under the social services block grant (title XX of the Social Security Act), a State must:

(1) Deny a child care license to any individual or provider if that individual or any employee of that center has ever been convicted of child abuse, or any similar offense, anywhere—not just within the State of question;

(2) Report information on convicted child abusers and child molesters to the U.S. Department of Health and Human Services (HHS);

(3) Establish a toll-free telephone hot-line for reporting child abuse cases; and

(4) Follow newly established HHS guidelines for State licensing and monitoring of child day care services mandated in this legislation.

The act also requires the Secretary of HHS to:

(1) Establish a national file of individuals convicted of child abuse, child molestation, or similar offenses; and

(2) Establish standards and guidelines for State licensing and monitoring of providers of day care services.

Finally, a 13 member advisory panel of child protection would be established to advise HHS on necessary standards and guidelines and to propose additions and changes to these standards as they are needed.

The Federal responsibility here could not be more clear. We have tremendous leverage with the States to force them to take decisive action against those who prey upon our children. HHS estimates that, of the $2.7 billion in the social services block grant, 20 percent, or $540 million, is spent on day care services. States that do not enact the protections mandated under our bill would lose their title XX funding.

The children of this country are calling upon us for help. I strongly believe we can respond expeditiously and in the best interests of our children. By passing the National Child Protection Act, we can effectively assure that tragedies such as those at the Praca Day Center in the Bronx and other centers are never repeated.

Again, thank you for affording me the privilege of testifying here today.

Senator SPECTER. Thank you very much, Senator D'Amato.

We turn now to our first witness, the distinguished district attorney from the Bronx, the Honorable Mario Merola. District Attorney Merola is the prosecutor handling the cases of the day care center in the South Bronx where 4 defendants are charged with molesting some 30 children.

District Attorney Merola has brought a very distinguished record to his position. He has been an assistant district attorney, I note, back in 1960, perhaps as important a job as there is. I was an assistant district attorney at the same time. He then served as councilman, chairman of the finance committee of the city council, and was elected to the position of district attorney of Bronx County in November 1972 and was reelected in 1975, 1979, and 1983.

He has an extended list of public service achievements which we will make a part of the record, and we will make D.A. Merola's full statement a part of the record. We welcome him here, and we look forward to your testimony.

Mr. **Merola**. May I bring my two colleagues who have done all of the work in this particular area with me?

Senator **Specter**. By all means, Mr. Merola, please do, and if you would identify them for the record, we would appreciate that.

STATEMENT OF MARIO MEROLA, DISTRICT ATTORNEY, BRONX COUNTY, NY, ACCOMPANIED BY NANCY BORKO, HEAD, DOMESTIC VIOLENCE BUREAU; PETER D. CODDINGTON, APPEALS DIVISION; AND CHARLES BROFMAN

Mr. **Merola**. Surely. To my right is Ms. Borko, the head of our domestic violence bureau; Peter Coddington of my appeals bureau, and Charlie Brofman.

At the outset, Senator Hawkins, Senater Specter, and Senator D'Amato, I want to congratulate all of you for bringing this problem to the forefront.

More important, you, Senator Specter, if you introduced this bill 2 years ago, you certainly should be congratulated because I have got to be quite candid with you. Up until April this year in Bronx County, we were so inundated with our arsons, with our robberies, and with our rapes that we did not give this problem much attention, and it was not until the Federal Bureau of Investigation, in April this year, came to Bronx County and revealed the problem to us that we started to focus in on it.

As a result of the work that we have done, together with the FBI, our sex crime unit, we have reached this point, but more important, since we started the investigation, we have read all about Minnesota, about California, about Florida, about New Jersey, but we have also gotten inquiries from Australia, from Canada, and from England.

What I am really suggesting is that this problem is probably an international problem, and I think that at the outset we ought to have a commission to look into the depth, the breadth, and the scope of the problem before we even do anything.

But that does not mean in the meantime that we do nothing. I think that while this study is in progress, we must come to grips with the immediate problem of developing national minimal standards for the operation, control, licensing, regulation, and monitoring of child-day-care centers which will, at the very least, curtail and hopefully eliminate entirely the problem of sexual molestation in such centers.

I believe that certain national standards can be set today which will deter continued abuse while we study the entire problem. It is based upon the assumption that no adult will sexually molest a child if he or she thinks that another responsible adult is watching and may catch them in the act. There are obviously many ways in which this can be achieved.

One standard which should be implemented, in addition to any others, would mandate that all day care centers should allow parents or their designees to have immediate access to their children at any minute of the day. Inspection by qualified professionals, as well as visiting nurses services, should be also utilized to examine both the center and the children. These services certainly help to deter, prevent, and discover child abuse wherever it may be.

In addition, there should be some effort on a nationwide basis to educate parents as to what symptoms to look for in their children, and to teach their children to protect themselves as best they can.

Some method must also be devised by which we can learn more about the adults that would supervise our children before we entrust our children to them.

Let me tell you something about the background of the individuals these children are accusing of molesting them. One individual had a felony conviction for drug dealing. He was on probation and admitted using heroin regularly during the period that he worked at the day care center. Another had a misdemeanor conviction.

As to their qualifications for caring for our children, one individual who had the most allegations leveled against him, something like abusing 14 children in 83 incidents, brought the following background of training in child care to the day care center. His last job was that of a sales clerk at a shoestore for 16 months. Before that he had managed a drycleaning establishment for 6 months. Before that he had been employed by a fast-food restaurant for 29 months. I do not want to name the fast-food restaurant.

Another had been a salesman in a shoestore for 6 months, and he could not spell the name of the store which employed him or the title of the position for which he was hired.

Educational standards for day care center workers ought to be upgraded on a national basis. Right now, in New York City, a teacher's aide in a day care center needs only an eighth grade education. A teacher's assistant needs only a high school diploma or its equivalent. Teachers, however, need a bachelor's degree in early child development.

Yet to teach or assist in kindergarten in a New York City public school, the requirements are much greater. To be certified, a teacher needs a master's degree. An assistant needs a bachelor's degree, and an aide needs a high school diploma.

I ask you: Should the educational requirements to care for, teach, and nurture our children be different only because the child is a year or two younger?

Obviously all employees of a day care center should undergo background checks before they are hired. I closely scrutinize the background of all of my assistants before I hire them. I know that the Federal Government does the same.

While the background check for those who care for our children might necessarily be different in kind, I do not think it should be different in quality. It certainly should be far more thorough than apparently it is at the moment. I think the Bronx County experience proves that.

An individual facing an allegation of child abuse had been terminated by one city funded day care center for taping the mouth of a child. Yet he immediately began working at another city funded day care center. Both day care centers are regulated by State and local child welfare agencies. Thus, before he was hired at the second day care center, his application had to cross the desk of someone who should have been aware of the prior termination.

New York State keeps a central registry of all allegations of child abuse. Although the bureaucrats do not believe the word of the 4-year-old girl that this individual raped, her complaint was on file. Why didn't somebody pull the file and look at it before this individual found employment at another day care center?

The Federal Government should require character and psychological evaluation of all day care center employees before they are hired. Furthermore, all prospective day care center employees should be fingerprinted. While this may not be a panacea, we do not want convicted criminals working with our children.

In formulating rules and regulations governing day care centers and family home care, we must do away with the philosophy that these matters are primarily of social concern and only secondarily criminal acts which should be prosecuted. Child abuses, including sexual attacks of all sorts, child pornography, rapes, sodomies, serious burns, fractures, and malnutrition must be first viewed as criminal acts. We must first deal with child abuse as the horrible crime that it is.

Let us enact national standards that will help to deter, if not completely eliminate, this cancer from our society, and let us create an atmosphere of true care and nurturing for our children, wherever they are, in their own homes or in other's.

Senators, a house is not a home, and a house in which a child is abused is never a home.

Thank you.

[The prepared statement of Mr. Merola follows:]

PREPARED STATEMENT OF MARIO MEROLA

I thank you for the privilege of testifying before the Sub-Committee on Juvenile Justice of the Senate Judiciary Committee. In the past few months I have been confronted with a malignancy that has festered silently for far too long in the body of our society and which cries out for federal, and perhaps even international, attention and action.

I have been the District Attorney of Bronx County, New York for approximately 11 1/2 years, and, during this time, little has occurred in this nation that has shocked or surprised me. But, I have been deeply saddened and profoundly troubled by what appears to be a pattern of events which has recently come to light in Bronx County and which, I am sorry to say, is probably occuring in almost every community in this nation and is almost certainly occurring somewhere at this very moment. I speak of the cancer of child abuse and of our societal failure to listen to those members of our society who are too young to lie about this cancer and who are too young to be heard. I also speak of the long entrenched child welfare bureaucracies which in most instances are the first to hear the complaints of our children but whose institutional philosophies and traditional procedures prevent them from understanding and acting upon what our children have told us.

One example from the many I could choose will make my point clear. The Bronx County Grand Jury recently indicted an employee of a Bronx County day care center for taping the mouth of a five year old girl, taking her to a bathroom in the day care center, and then forcibly raping her. The child's complaint was first addressed to the state and local child welfare bureaucracies who—despite medical evidence of sexual contact—apparently concluded that the child's complaint of abuse by the employee was unfounded merely because the employee denied that abuse had occurred. When informed of these facts, the day care center terminated the employee for taping the child's mouth only because he admitted that act. My office was notified pursuant to state law, my staff listened to the little girl, and brought her before the a grand jury to describe her experience. Subsequently an indictment was returned charging two counts of rape in the first degree. Just prior to the time he was indicted and arrested, this individual was working at another child day care center in Bronx County.

This event and others that have occurred in Bronx County since April of this year have led me to examine similar child abuse cases that have occurred in California, New Jersey, Minnesota, Florida and other states. Additionally, inquiries that my office has received from Australia, Canada and England have led me to conclude that we are confronted with an international problem of child abuse. It is my belief that the problem is more pervasive than we ever thought. At one time or another it probably has touched every city, every town, and every village in every country in the world. If my belief is correct, and I certainly think it is, the implications boggle the mind.

I do not believe that anyone is fully aware of the breadth and depth of the problem I am speaking about, but I can give you some idea of the size of the population pool in this country which potentially could be harmed by it. 52% of our children under 6 years of age have working mothers. 44 1/2 million working mothers have children three years of age or younger. Women constitute over 53% of our total workforce. These numbers increase yearly, and single parent families are also on the rise.

Clearly the need for child day care in a safe, secure, and nurturing setting is a national concern which is just as significant as education, health care, social security, defense, full employment or any other important national issue. Women simply cannot and should not be kept out of the workforce, and child abuse must not become a part of the cost of earning an honest living. The care of our children during the work day is no longer just a woman's problem; it is a problem that everyone must deal with. It is a vital national concern, calling for comprehensive national scrutiny and for immediate national action. I believe that, at least to start, we should have a threefold approach.

First we need an objective and independent national study and survey of the entire day care frame work which will tell us the scope of the problem we face, and give us an idea of its ultimate impact on society. I stress that the study must be independent because I have no confidence that the traditional child welfare bureaucracies which would normally be asked to gather this type of information are equipped to do so.

I am making no broad allegation of bad faith on the part of any bureaucracy. Howwever, it is axiomatic that no one can effectively investigate himself. To ask a day care center or child welfare agency, with its vested interest in the existing bureaucracy, to report on its own shortcomings is to create a conflict of interest.

Furthermore, there are many voices crying out in this world. I am concerned that the day care and child welfare bureaucracies are conditioned to hear only the voice of the past, whispering its nineteenth century views that such things as sexual abuse of children never happen except in the minds of the children themselves. I am concerned that such bureaucracies will be deaf to the voice of innocence, expressed in the cries of an abused child, or the voice of concern or outrage expressed by parents convinced that something is terribly wrong with their child. I am concerned, in the final analysis, that the bureaucracies of which we speak will not know how to do the right thing, even if they want to.

The example that I told you about proves this point. If more proof is needed, I think you should examine the case of the McMartin Pre School in Manhattan Beach, California. There, prosecutors uncovered a pattern of sexual molestation of children which spanned a decade. I simply cannot believe that over the course of 10 years absolutely no evidence arose which could have alerted the appropriate bureaucracies that something was amiss in that day care center. Sadly, it seems that today only prosecutors have ears for the cries of our children. Rather than the screams of a child who has been molested, the traditional bureaucracies and the day care center employees seem only to hear a bawling four year old who, they want to believe, just woke up afraid of a nightmare.

Senators, this nightmare is the truth. And the fact that the truth comes from the mouths of babies, who lack the verbal skills to articulate what has happened to them, means only that we have to work harder. We must find new methods of learning the truth from those who are too young to lie about it, and we must abandon the myth that children are discussing a dream, when in fact they have lived through a nightmare.

I propose that Congress authorize a nationwide study by an independent team of experts in the fields of pyschology, medicine, the social sciences, and law enforcement which will examine the entire spectrum of child day care, and which will issue a report identifying this problem in its many subtle, but invariably, hideous forms.

Second, while this study proceeds we must come to grips with the immediate problem of developing national minimal standards for the operation, control, licensing, regulation and monitoring of child day care centers which will, at the very least, curtail and h[illegible]liminate entirely the problem of sexual molestation in such centers. The problem of which I speak does not require an appreciation of local geography, economic conditions, or individual philosophy to equitably regulate it. I am aware of no religion that includes the forcible rape and sodomy of four year olds among its tenets.

I believe that certain national standards can be set today which will be as effective in Nome, Alaska as in Miami, Florida, and as fair in Santa Fe, New Mexico as in Boston, Massachusetts. One such standard, which should be enacted immediately, will deter continued abuse while we study the entire problem. It is based upon the assumption that no adult will sexually molest a child if he or she thinks that another responsible adult is watching and may catch them in the act. There are obviously many ways in which this can be achieved. But one standard which should be implemented in addition to any others would mandate that all day care centers allow parents or their designates to have immediate access to their children at any minute of the day.

Inspections by qualified professionals as well as a visting nurse service should also be utilized to examine both the center and the children. These services will certainly help to deter, prevent and discover child abuse where ever it may be. In addition there should be some effort on a nationwide basis to educate parents as to what symptoms to look for in their children, and to teach their children to protect themselves, as best they can.

Some method must also be devised by which we can learn more about the adults that would supervise our children before we entrust our children to them. Since April of this year, the Bronx County District Attorney's Office, after receiving information from the Federal Bureau of Investigation, joined with the FBI, the sex crimes specialists of the New York City Police Department, and the Bronx District Attorney's police detective squad to form a joint child sex crimes task force which would investigate allegations of sexual molestation of children in day care centers in Bronx County.

Since then we have interviewed numerous children and have found sixty of them who have been the victims of about two hundred separate incidents of sexual molestation, including forcible rape and sodomy-both oral and anal. These incidents have occurred in eight separate day care centers in Bronx County. The oldest victim is eight years old. The youngest was two years, eight months at the time of the attack. To date three individuals have been indicted. It is my educated guess that more indictments will follow in the near future.

Let me tell you something about the backgrounds of the individuals these children are accusing of molesting them. One individual had a felony conviction for drug dealing. He was on probation and admitted using heroin regularly during the period that he worked at the day care center. Another had a misdemeanor conviction. As to their qualifications for caring for our children, you be the judge. One individual, (who has had the most allegations levelled against him), brought the following back ground of training in child care to the day care center. His last job was that of a sales clerk at a shoe store for 16 months. Before that he had managed a dry cleaning establishment for six months. Before that he had been employed by a fast food restaurant for 29 months. Another had been a salesman in a shoe store for six months, and he couldn't spell the name of the store which employed him, or the title of the position for which he was hired.

Educational standards for day care center workers ought to be up graded on a national basis. Right now in New York City a teacher's aide in a day care center needs only an 8th grade education. A teacher's assistant needs only a high school diploma. Teachers need a bachelor's degree in early child development. Yet, to teach or assist in kindergarten in a New York City public school the requirements are much greater. To be certified, a teacher needs a masters degree, an assistant needs a bachelor's degree and an aide needs a high school diploma. I ask you, should the educational requirements to care for, teach and nurture our children be different only because the child is a year or two younger?

Obviously, all employees of a day care center should undergo background checks before they are hired. I closely scrutinize the back grounds of all my assistants before I hire them, and I know the Federal government does the same with its employees. While the background check for those who care for our children might necessarily be different in kind, I don't think it should be different in quality. It certainly should be far more thorough than it apparently is at the moment. The Bronx County experience proves that.

Remember the first individual I mentioned. He had been terminated from one city funded day care center for taping the mouths of children. Yet, he immediately began working at another city funded day care center. Both day care centers are regulated by state and local child welfare agencies. Thus, before he was hired at the second day care center, his application had to cross the desk of someone who should have been aware of the prior termination. New York State keeps a central registry of all allegations of child abuse. Although the bureaucrats didn't believe the word of the four year old girl this individual raped, her complaint was on file. Why didn't somebody pull the file and look at it before this individual found employment at another day care center?

The Federal government should require character and psychological evaluations of all day care center employees before they are hired. Furthermore, all prospective day care center employees should be fingerprinted. While this may not be a panacea, we do not want convicted criminals working with our children.

These standards require resources in the form of technology, training and money, and I believe that the federal government ought to provide whatever is necessary to do the job we have to do. The actual implementation of these standards should be carried out at the state level but the resources should come from the Federal government in the form of grants in-aid-to the states. The entire cost of implementing these standards would be no more than the cost of developing, testing and flying just one of our space shuttles.

In formulating rules and regulations governing day care centers and family home care, we must do away with the philosophy that these matters are primarily of social concern and are only secondarily criminal acts which should be prosecuted. Child abuses including sexual attacks of all sorts, child pornography, and all serious burns, fractures, and malnutrition must first be viewed as criminal acts. We must first deal with child abuse as the horrible crime that it is.

Certainly preventative measures of a social welfare nature should be taken, and certainly therapy for the victims, their families, and for the offenders as well must be provided, whether the case is criminally prosecuted or not. What's more, no one knows better than I that a criminal prosecution is not warranted or even helpful in every case. However, since April of this year I know better than anyone that certain cases must be criminally prosecuted immediately, and that such criminal prosecutions themselves are an effective child protective measure.

I know of only one abused child who has what it takes to overcome the outrage that was perpetrated against her and grow up to become a United States Senator. I know of many, many more who grew up to express their outrage by committing heinous and sadistic crimes against adults and against

other people's children as well as their own. Let us enact national standards that will help to deter if not completely eliminate this cancer from our society, and let us create an atmosphere of true care and nurturing for our children whether they are in their own home or another.

Senators, a house is not a home, and a house in which a child is abused is never a home.

Senator SPECTER. Thank you very much, Mr. Merola.

Let me ask you a threshold question. You have been prosecutor for a great many years, going back to 1960. Do you think there is more child abuse in 1984 than there was in 1960?

Mr. MEROLA. Based upon my recent experience, I get the distinct feeling that these pedophiles have been around a long time. I have traced them back to some of our earlier times, which I shall not name because of the fact that we get into some kinds of impressions of ethnic backgrounds, but evidently, I think it has been with us a long time, but it is only now getting the recognition. I think it has been with us all along, and I think that is the point I would like to make.

You have had the perception 2 years ago of viewing it. I suspect that it is widebased within our culture, and that was what I was saying at the outset. I am saying, hey, we have got to look at this. Let's see how widespread this whole problem is.

There are all kinds of alleged studies. One says 1 out of 4 young girls is going to be molested by the time she is 18. One says 4 out of 10, and that is precisely the point. I think that this problem has been with us a long, long period of time. I am talking about throughout the world.

I think we should have some kind of an independent study by people who are not looking to sweep it underneath the rug so that we can look at the breadth of it, the dimensions of it, and begin to deal with the particular problem.

Senator SPECTER. This subcommittee had investigated problems in the Oklahoma detention centers in 1981 and 1982, and we found that there were substantial problems related to people who had criminal records for sexual assaults, who were committing more sexual assaults of juveniles in custody.

There was an obvious inference to be drawn that there ought to be screening of anybody who dealt with juveniles in a custodian situation or in a day care center, but my own sense is that there is substantially more of this problem today than there was in the past.

Mr. **Merola**. I do not want to disagree with you. You may be absolutely correct. I just get the feeling that it is surfacing, that it has been with us all along. I think we have had heroic statements made by the Senator to your right concerning her childhood, and I suspect that all of us who are—I do not want to use the word "normal," but do not have this aberration, have never looked upon this problem other than whenever it surfaces.

Yet we have had people, I believe, in human resources, health and welfare—I am now going to get in trouble here—who always took the position that you could not believe young children, and I would suspect that we are getting away from that. I would suspect that we are starting to look at our young people. They are credible. They are believable, and they are beautiful, and I think that this is where the change is coming in, in psychiatry and psychology, and this is exactly what we are experiencing.

As I sit here and talk to you right now, there are about three or four programs being run on channel 13 on this particular problem. We have all kinds of psychologists calling us day in and day out, in effect, saying to me, "Where have you been," giving us their books, and so on.

So I suspect this is a longstanding problem that has surfaced and is now getting the recognition that you ladies and gentlemen are giving to it, as far as that is concerned.

Senator **Specter**. Mr. Merola, what effect, if any, do you think that pornography has on the incidence or the widespread effect of child abuse?

Mr. **Merola**. Well, certainly there are some indications by some of the studies that there are certain groups who are utilizing these young individuals in conjunction with pornography and are certainly exploiting them in that particular area, but our investigation, however, to the present time has been limited to day care centers.

We have been looking at, since April of this year, something like eight day care centers within the Bronx, and we are looking at something like 60 victims who have been involved in something like 200 incidents. It is almost astounding, and I am talking about something which has just surfaced, has just come to our attention with the FBI and the local police at this particular time.

Senator **Specter**. Have you found pornography to be linked to any of the specific instances of child molestation which you have investigated?

Mr. **Merola**. We have not had that experience as yet. I would not be surprised, but we have not had that experience.

Senator **Specter**. We recently found in Philadelphia the sale of the book, "How to Have Sex with Kids," which in my judgment, is an astounding thing, in written material, a "how to do it" book, describing how to meet children, how to entice them, how to develop a relationship, and how to lure them into a sexual liaison, and in effect how to molest children.

The pornographic literature is vastly different today than it was when you and I were assistant district attorneys back in 1960, and the question which is on my mind is whether this kind of pornographic material is not a causative factor, giving ideas to pedophiles who may be about ready to act, but whether that is not a triggering factor. I would be interested in your judgment on that.

Mr. **Merola**. I would think that if you just limit the causation to that particular group, I think we would be making a serious error. I do believe they are contributing to the particular problem. There is such a group in New Jersey. I forget the exact title that they have. But our experience in the Bronx has been a larger question of sexual orientation, people who are engaged in this for purposes of gratification, their gratification at the expense of the child, and the damage that they are doing to the child.

So I would not exclude one for the other. I would suspect that we would have part of that group in it. I would suspect you would have part of the groups who are just plain child abusers and molesters and criminals, as such, and again, I think it is a worldwide problem that we are just coming to grips with.

Senator **Specter**. Speaking to the worldwide aspects of it, we have noted recently that there has been a heavy influx of pornographic materials from Scandinavian countries, and I would be interested in your professional opinion as a law enforcement officer as to the scope of problems caused by that influx and what, if anything, you think we ought to do about it.

Mr. **Merola**. I certainly think we ought to curtail it. I certainly think that we ought to restrict it as much as humanly possible, and to the extent that we can do that within the scope of the first amendment, I think we ought to do it.

I think that we are talking about America of tomorrow, as the Senate has indicated. We are talking about our young people, and we are talking about the future of America, and I think that child protection, I think, should be the root. I think that up until very recently the concept held by people within this entire area has been to protect the family unit at all costs, the family at all costs, to the extent of more or less sweeping this underneath the rug. So I think we have got to change our philosophical direction. There has to be child protection at all cost.

Senator **Specter**. Mr. Merola, you made a reference to one of the defendants in one of your cases having been charged with the rape of a girl 4 years old, but the matter had not been pursued. Could you amplify what happened in that specific case?

Mr. **Merola**. It was part of the bureaucracy. I suspect you are alluding to the one involving the taping of the mouth. It seems that back on February 19 of this particular year, there was an allegation of child abuse, a rape, against this young girl. It seems that 9 days later the Human Resources Administration, or one of its subdivisions, closed out the case based upon the fact that allegedly the abuser was another student there, a 5-year-old.

Subsequently, around April 20 of this year, the doctor who had made the initial examination called our office and said that that was hogwash, that that was nonsense, that the abuse perpetrated upon the child was by an adult.

We subsequently got involved in the particular case. We have apprehended that individual, and he is one of the individuals who is under indictment, as far as that is concerned.

Again, I think what that reflects is the inability and the lack of expertise of people who work with human resources and with the welfare agencies. They do not have the necessary expertise or education in detecting this type of criminal act.

I am saying to you that this is a highly specialized area. I know that my people here sitting alongside of me have been very, very frustrated in trying to make these particular cases, and I think that these people in these various agencies do not have the expertise.

I can give you case after case. One of the cases that we have presently involves an allegation of child abuse against one of the individuals. It was reported to the social agency. The social agency talked to the child and felt there was nothing to the case.

With that, in view of all of the publicity surrounding this whole area, he said: "I will give this to the Bronx DA." He called us up and gave us the case, but we went and spoke to the individual. That person made a confession, and that confession is on TV.

So this goes back to the whole concept of how do we deal with this problem or who should deal with this problem, and the scope of the problem.

Senator **Specter**. Mr. Merola, if legislation had been in effect, say, 2 years ago requiring that there be a records check, fingerprint check of anybody who dealt with juveniles in the custodial or day care situation, how many of your cases could have been prevented?

Mr. **Merola**. I would say the one who had the drug conviction, possibly the other one who had a misdemeanor conviction. If you had a central registry, probably the third one.

I do not want to give the impression that fingerprinting in and of itself is a panacea for the problem. I think it is a step in the right direction which will help resolve it. I think that, by and large, most of the child abuse cases that I have seen are perpetrated by individuals who have gained the trust of the young people, have gained their friendship, and so forth.

That is why I indicated in my statement that in addition to the fingerprinting tactic, we ought to have a background check. Exactly how you do that, I am not quite sure, but I think it has to be done.

Senator **Specter**. But a number of those cases could have been prevented had there been precautionary steps taken?

Mr. **Merola**. Absolutely. There is not any question they could be prevented. As a matter of fact, the city of New York right now is in the process of fingerprinting people who are working within day care centers, and I would like to see the results of that, if they ever are revealed. I do not know.

Senator D'**Amato**. Are you going to ask for them to be revealed?

Mr. **Merola**. Oh, I suspect the people who have a record will be fired, probably yesterday.

Senator D'**Amato**. Are you asking for them to be revealed?

Mr. **Merola**. Well, we can ask them.

Senator D'**Amato**. I am going to ask for them to be revealed because, after all, they are Federal funds, and I think maybe this panel, Mr. Chairman, might ask that.

Mr. **Merola**. It would be very interesting.

Senator D'**Amato**. Before legislation is passed, a strong recommendation from the chairman, endorsed by a number of our colleagues, written to the various State day care agencies, asking them to undertake this on a voluntary basis.

Senator **Specter**. Would you amplify, Mr. Merola, what you are talking about here? These are day care centers in New York City?

Mr. **Merola**. Well, in New York City you have a whole variety of public and private day care centers. My understanding is that in New York City, we have something like 498 public day care centers. In addition to that, we have 830 private day care centers.

I have to presume, and this is an assumption off the top of my head, that the private day care centers probably operate a little more efficiently, probably have a little better quality of people. I suspect that in the public day care centers, the way I understand it, certain groups within certain localities get grants. They get grants and they are permitted, such as in the PRACA situation, the money is given to a group or a corporation within an area to have a day care center, and although there are rules and regulations allegedly governing and controlling the day care centers, this money is given to this group who then seems to be able to do whatever they want with that money. There does not seem to be any control upon who these individuals are, what their background is, and so forth, and so on.

I would hope that as a result of the effort now being made by the Human Resources Administration that in these 498 public day care centers, I think it would be quite revealing to see what type of person works there, who he is, or who she is, and so forth.

Senator **Specter**. So you would like to see this 498 public day care centers make disclosures as to the backgrounds, what they know about their employees?

Mr. **Merola**. I think that is minimal, minimal, absolutely.

Senator **Specter**. As chairman of this subcommittee, I would make that request and will do so formally in writing. I think that is a minimal request to make, to see what knowledge those public day care centers now have as to the backgrounds of the people who are working there.

Mr. **Merola**. I think maybe you ought to date that back to January 1 of this year because you get a better picture of what we are experiencing and what is going on in this entire area.

Senator **Specter**. Do you have reason to believe, Mr. Merola, that should that information be made public, that it would disclose knowledge on the part of those who were in charge that employees of the public day care centers had records, which would suggest problems for dealing with children?

Mr. **Merola**. I think that would be pretty difficult to prove, to indicate that those people who employed them knew of the record of that particular individual, but I think you will find that the people who are employed enjoy a cozy relationship with the people who are employing them. Whether you could determine that those people knew of, say, a record, I think that would be difficult to prove.

However, it would seem to me that if we had that information, we would have some kind of basis on which to learn where we are, where we are going, and what we ought to do.

Senator **Specter**. If you think there is a cozy relationship and you think there is probable cause, if it is something which is worth pursuing in this subcommittee, we will pursue it.

Mr. **Merola**. Thank you.

Senator **Specter**. What about the private day care centers?

Mr. **Merola**. We have only had one allegation against a private day care center in Bronx County, and we are looking at that particular one. Based upon our experience, they seem to have a better type of individual who is working in that particular area, but I suspect, and this is only a hunch, that child abuse crosses all kinds of social, economic stratas.

I suspect, and I do not want to mention any particular group that takes care of children, that this problem is widespread. It has nothing to do with the socioeconomic basis.

Senator **Specter**. One final question, Mr. Merola. You are of the view that Congress ought to legislate a national minimum standard for people who take care of children in day care centers. Do you see any problem with the Federal Government moving into an area which is traditionally for State regulation?

Mr. **Merola**. I say that the Federal Government ought to set up standards and provide the wherewithal, sort of a grant-in-aid type. In other words, if the State wants the assistance, then the Federal Government would provide the funds, provided the State would meet these minimum standards. I am not looking for more and more bureaucracy. That is the one thing in all of this that has turned me off, is the bureaucracy.

Senator **Specter**. So you would follow what Senator D'Amato has suggested?

Mr. **Merola**. Absolutely.

Senator **Specter**. Which is to the extent that there are Federal funds involved, they be cut off if there is not local State compliance?

Mr. **Merola**. Grant in aid tied in, absolutely, and I think it is a problem that, as Senator Hawkins has indicated, so many women are going into the work force. Percentages are going up and up every day. There is such a tremendous need for day care centers, and mothers certainly should not have that feeling that when they go to work they have got to worry about their young ones being molested.

I certainly think it is a national problem, just as social security is, just as defense is, and all of the other problems. I do not see how we can talk about the youth of America and just ignore their problems. It is part of it. It is part of education, just the way the Federal Government helps education.

Isn't this part of the educational process, the day care center, your Head Start Program? I see a Federal role from the point of view of resources because I would suspect that local governments are having a great amount of difficulty raising the necessary revenues for this particular job, and I think we need to carry it interstate.

Senator **Specter**. Thank you very much.

Senator Hawkins.

Senator **Hawkins**. Janet Reno, who is the State's attorney for Dade County, says there is difficulty in using the NCIC-3, the interstate identification index that searches criminal records, histories of potential employees for schools and child care agencies, and agrees that the concept is excellent, and I think it is wonderful, but that only a handful of States are cooperating in the program.

They are discovering that several States even have statutes restricting dissemination of any information for licensing or employment purposes. So even though we are talking about having the answer, if the State has a statute that restricts them from participating in this NCIC-3, and I understand only nine States now cooperate in this, it seems to me that it may require Federal preemption or at least incentives for States that our bill does for them to reform their statutes to get in line with the program so that we can use this NCIC-3 across the board.

Would that be your thoughts as district attorney?

Mr. **MEROLA**. That would be absolutely great as far as that is concerned. We in Bronx County, and I know Janet very well, and she is a heck of a prosecutor, and I suspect that she is so inundated with the drug problem in Florida which sometimes you cannot see the forest for the trees, but we in Bronx County had an Identi-Child Program, whereby we, the Bronx County's district attorney's office, provided the fingerprinting of any child to help in the event a child was lost.

So I do not see this as a monumental problem. I do not see it as a legal problem. I do not see it as a civil rights problem, and I think none are so blind as those that will not see, as far as that is concerned. I think it is something that just has to be done.

Senator **HAWKINS**. I hear a lot of anger from parents who are mad at prosecutors. They are mad at district attorneys. They are outraged at State's attorneys for what appears to be their unwillingness to take these cases to court.

Mr. **MEROLA**. Well, I can just tell you right here and now that I have three individuals alongside of me, and if I refuse to take one case to court, I think they would get rid of me. You have three individuals here that have worked on these cases since April, I think we probably have assigned, I would say, in the area of 16 assistant district attorneys to work on this particular problem, together with FBI people, local sex crime people. I think that everybody who has worked in this particular area takes on a devotion, zeal that I have never seen in an assistant district attorney, and especially the women, Senator Hawkins.

If you tell me that my women, Nancy Borko, Eileen Koretz, Barbara Brennan, when they get one of these cases, I have never seen them work as hard.

Senator **HAWKINS**. What about plea bargaining?

Mr. **MEROLA**. They are so driven. They are so dedicated in this particular area. It has become, and I hate to say this, but it has become a cause for them.

Senator **HAWKINS**. I appreciate their dedication.

Mr. **MEROLA**. And it is the women more than the men, seriously.

Senator **HAWKINS**. That is not uncommon.

Senator D'**AMATO**. Now, wait a minute. Let's not go too far here. [Laughter.]

Senator **HAWKINS**. Let's talk about plea bargaining, for instance, where a child molester plea bargains, and then is released back into society. They just go into another county or go into another State and get employed right again doing the very same thing. Now, tell me how you feel about that.

Mr. **Merola**. I feel terrible about plea bargaining. I feel horrible about plea bargaining. I think it is a disgrace, and yet, on the other side of the coin, it is absolutely physically impossible to try all of our cases. We in the city of New York only try something like 10 percent of our cases so that we have to engage in plea bargaining, and I hate to say this publicly, but otherwise the entire criminal justice system will collapse.

Senator **Specter**. What is the point in making the arrest, Mr. District Attorney, if you do not get the sentences which are warranted? Isn't it just a colossal waste of time?

Mr. **Merola**. Do not put me into that position. You know I do not feel that way about it, but I say, hey, it is better to do something than to do nothing.

Senator **Specter**. Mr. District Attorney, I think it is high time all of the DA's of American stood on their hind legs and their assistants, and said, "No more plea bargaining." I stopped it in Philadelphia.

Mr. **Merola**. But what do you do in those States like New York where State prisons are filled to something like 116 percent of capacity? We are overcrowded at Riker's Island. At Attica we have these kinds of riots, and then you put up a bond to build prisons and people vote it down.

The public is very easy to say, "Lock them up, Mario. Put them away. Stick them away." But if you say to them, "Hey, how about taking a nickel out of your pocket to build a prison," or vote in a prison bond issue, we do not get that. We are caught in this particular squeeze. We are caught in a squeeze which you are obviously well versed in. You have the experience, and I would love to see the day where we could all say around the nation, "Hey, the law is the law. If the legislators want to change what the penal law ought to be, so be it. Go out and amend it. Let's try each and every case."

I suspect that is a paradise that you and I are not going to see in our life.

Senator **Specter**. In California, the origin of proposition 13—no taxes—they passed two referenda to build prisons. The National Commission on Criminal Justice Standards and Goals, 1973, analyzed this problem and said plea bargaining should be abolished, and we give the Nation 5 years to do it.

I refused to plea bargain, and the backlogs built up, and we got 50 percent more trial court judges and made some progress on it. But unless the prosecutors refuse to plea bargain, the public attention will not be directed at the problem and the resources will not be made available.

Mr. **Merola**. I am glad you are bringing this up.

Senator **Specter**. I did not bring it up. Senator Hawkins brought it up.

Senator **Hawkins**. I brought it up.

Mr. **Merola**. Very recently, I think in September of last year, we were called into session by a Federal judge in New York City. He called us in, and he called in the five DA's and other people, and he started around the room. He said the prisons are overcrowded and would we agree to do certain things, and so forth and so on, and I was the lead off hitter, and I told him just exactly how I felt, that my job was to put people in jail, that the people he wanted to put out were not misdemeanants. There are no people who commit misdemeanors going to jail in New York City. The people who are going to jail in New York City are violent people who are robbers, rapers.

What I am saying is he is arguing about getting more prisons. He has got a bill in. Don't you have a bill? I don't see that bill going anywhere.

Senator **Specter**. Senator D'Amato and I went to Riker's Island, and we took a look at the 613 cases which were released, and a great many of them did not show up. Those who did not show up were accused of more crimes, and the answer was not to release those defendants.

Mr. **Merola**. I agree with you.

Senator **Specter**. The answer is to build more prisons.

Mr. **Merola**. I agree with you.

Senator **Specter**. Senator Hawkins, Senator D'Amato and I were on the Senate floor trying to get $600 billion in the budget last year, but it is not going to happen until there is sufficient public indignation to demand it.

Mr. **Merola**. I agree with you.

Senator **Specter**. The DA's are going to have to work with the Senators to bring public awareness to what is happening on plea bargaining when, as Senator Hawkins points out, they move to another jurisdiction and commit the offenses again.

Mr. **Merola**. I think we are ready, willing and able to do so. I would suspect, however, that those of us who have had experience in the legislative branch of government, and I have had some, that the only way we are going to effectuate that is by reordering our priorities. In other words, you are not going to get the public to pass bond issues for prisons. You are going to have to look within the scope of your existing budgets and say, "Hey, if this is so important," whether it be drugs in international trade or otherwise, you have got to give it the priority. You have got to reorder the priorities and do these things.

I would say that within the existing framework in New York City, I think our budget is something like $18 billion. I think the State budget is another additional $18 billion, but I think the State budget together with Federal aid is probably something like $36 billion, and I say that the way to go is within the existing budgetary structure.

We are not doing this. We are not doing it for the very simple reason that there are many special interests out there. I suspect that crime is the No. 1 issue when it comes to election day in November, but when it comes to the budgetary process in April or May, you have got stronger special interests and groups who are able to get a bigger piece of the budgetary pie than DA's or the public for more prisons, and I say that is the way we have to go.

Senator **Specter**. Mr. Merola, I understand those problems very well, but I would suggest to you that the people are prepared to pay for a criminal justice system which works if they understand the seriousness of the problem, and a good place to start, along with the efforts we three Senators have made on the Senate floor last year, we backed legislation for prisons, would be for DA's to stop plea bargaining, and let the backlogs build up.

Mr. **Merola**. I am ready to do it this afternoon.

Senator **Specter**. Wonderful. That is some progress.

Senator **Hawkins**. Great. That is worth the whole morning.

I get a lot of letters also from parents that are absolutely furious at probation officers who see nothing wrong with having a previously convicted child molester operate a babysitting service, and that is what happened in Miami. Now, are there some guidelines we write for the probation officer?

Mr. **Merola**. I think that is absolutely scandalous just at the outset. With all that is going on, it just does not make any sense. The kinds of standards that you want for young people aged 2, 3, 4, or 5, to be educated or grow up and be nurtured under that type of a setting, I certainly would not want that.

Senator **Hawkins**. Well, when we talk about regulations and reform, which we have been talking about here all morning, do you agree that enforcement of any regulations and any reforms that we make are an important component?

Mr. **Merola**. Absolutely. There is not any question in my mind that you should start regulating. We only talk about regulations and monitoring and licensing when we have got a problem. Up until the problem comes along, we do not look at it that way, and I think we have an obligation to do so.

I think that if we had that, we certainly would clean out a lot of the garbage that is in the particular area. If we clean up these people, if we get a better type of individual to work in that particular setting, we are not going to eliminate child abuse.

Senator **Hawkins**. In Florida we have only 37 investigators for 3,500 licensed centers. I mean right there, and in these 3,500 centers, we have 250,000 children, and those are the licensed centers. So even if they are the best trained and the most dedicated individuals in the world, those 37 investigators cannot do the job.

Mr. **Merola**. You have got to apply a certain amount of resources. We used to say in the business that the budget is a level of service. You want a level of service. You have got to apply a budget. The greater the budget for a particular service, the more services you are going to get, and I would suspect if you have got that type of a situation, you have got a problem.

Senator **Hawkins**. And you will agree prevention is probably the best thing we do?

Mr. **Merola**. Absolutely. No question about it.

Senator **Hawkins**. Thank you. I have no more questions.

Senator **Specter**. Senator D'Amato asked me if you really can stop plea bargaining. I really believe you can. In 1960, 1966, 1967, 1968, 1969 through 1974, we stopped plea bargaining in Philadelphia. We built up the backlog of homicide cases to 500 cases. We had a 56-trial bench. Twenty-five new judges were added through legislation.

When I started we had 12 criminal courtrooms. On January 3, 1966, when I finished up 8 years later, we had 45 courtrooms, and we just refused to plea bargain.

Mr. **Merola**. Well, let me answer you this way. I do not think we have that same kind of view in New York. Bills to have more judges added to the court have been defeated in the last couple of years. We have what is known as speedy trial issues. If we do not bring a person to trial within a particular period of time, which you are well aware of, Senator, we get caught in that crossfire. If we do not bring that person to trial in a short period, they will dismiss the case.

Judges would love that. Judges would love numbers. They love numbers on plea bargaining. The last thing they want to do is try cases.

Senator **Specter**. But your administrative judge said last year on the front page of the New York Times that New York City was a jungle, that it was anarchy, that there was no law enforcement.

Mr. **Merola**. That is right.

Senator **Specter**. There is no point, Mr. Merola, in arresting and prosecuting someone if the sentence is inadequate.

Mr. **Merola**. I am not going to argue with you. You are putting me in a difficult situation where I agree with you, and yet I say to you that what you are really saying is let the system come to a halt. Let's have a strike. That is what you are really saying. Let's have a strike.

Senator **Specter**. Let the system come to a halt. If they cannot try the cases for adequate sentences, there is no point in having a system unless there is an adequate sentence.

Mr. **Merola**. We are compromising that.

Senator **Hawkins**. They do it for the garbage, I notice, in New York City.

Senator **Specter**. Senator D'Amato.

Senator **D'Amato**. That is one of the things that I always feared as a local administrator, that if the garbage men went out on strike, we were in deep trouble. Everything else can quit; they can strike, and things seem to work.

Let me just diverge just for a moment. I believe it is a national tragedy that we have not demonstrated the kind of leadership to inculcate people with the fact that there is a need, a crying need for more prison space, and I am tired of all of these organizations that run around and tell people, "Oh, we do not need more costly prison space. It's not necessary." They are just not conversant with the facts.

The facts of the matter are that there are some very dangerous, incredibly reprehensible vermin that are being loosed on the street, and I put it just that way, simply because there is inadequate space. They are being paroled with no other reason than that there is no space.

Let me tell you something. When our entire criminal justice system breaks down, when you have Federal courts and State courts that release 21,000 nationwide last year because there is inadequate space; when you have a judge in New York who is more concerned about the rights of the prisoner and who will let 613 animals loose on the street who are committing more crimes; when you have a situation where people do not feel safe in their homes, and they should not; and you know this nonsense that crime has dropped 7 percent. So what? So what if it drops 7 percent in New York? It does not mean a thing.

The fact of the matter is it went up 10,000 percent over the last 20 years. So if you drop it 7 percent, statistically it does not mean anything. We are kidding the people.

Mr. **Merola**. Well, I think it means something. To the extent that prisons are filled to capacity, there is some justification for the position that you are all taking, that if we put more people in jail who are criminals and who are career criminals that they are not on the street committing crimes.

Senator **D'Amato**. Mr. District Attorney, I think it is also important to note that we are not talking about the white collar criminal, but people who are predators on society, who beat people, who rob them, who shoot them, who rape them, who commit the most incredible acts of violence on other people.

So we do not need the lectures of those who say, "Oh, you do not need them." I have gone and toured State penitentiaries. I have toured the prison cells with Senator Specter. Let me tell you something. You speak to the wardens there. You ask them, "Could you put some of these people in less secure facilities?"

They will tell you, "Senator, maybe 1 or 2 percent, but these people belong here. They are dangerous," and when you talk to some of the people who are there, "What are you here for?" Well, murder.

"Did you commit any other crimes?"

"Well, 6 years ago I was convicted of homicide. I took a plea to manslaughter."

"Did you commit anything else?"

"Well, yeah. I shot somebody."

I mean these are the kinds of people. You do not let them loose on the street, and the fact of the matter is that the crime rates have come down as a result of our filling the prisons, but I think we have to do more.

We have sponsored some legislative initiatives. At least let private sector build business and cut the cost by 20 percent, but, you know, I sent a questionnaire out to all of the residents of the State, and I have to tell you something. I have gotten back about 400,000, in which when you point out to people the need to prosecute violent criminals and to incarcerate them for an indefinite period of time and not to let them out simply because there is inadequate space, and you ask them, "Would you pay and vote for a bond issue or put up the moneys," they will tell you no. These people are fearless. They are outraged citizens. I understand their outrage, but their name is there, and they say, "Kill them. Send them to Devil's Island."

We have got to educate in some way to bring this about, but the same people you say, "Get the vermin off the street," are not willing to support the construction of additional facilities.

I think we have got to do it cheaper, better. We have got to use the private sector to do it because we can reduce those costs by 25 percent. We have to go to the public and demonstrate to them that we are talking about building cells for violent, dangerous people because there is another group out there saying, "We do not need any more cells," the so-called educators and these various groups, and I think that is tragic.

Mr. District Attorney, you have done a great job as far as I am concerned in bringing to light this monstrous problem, and you could have very easily turned your head, but you did not do it, and I want to commend you for that.

Second, I want to raise an issue. Yesterday at the city council, and I was not there, they held a hearing. I am reading from a newspaper account. It said:

> During the testimony, several Council members voiced concerns that political patronage may be a factor in the awarding of some city contracts at the various day care centers, and therefore, so-called "whistle blowers" fear the loss of their jobs and may be afraid to report the abuses in the system.

In other words, that day center would be closed down; they would be out on the street. We are talking about good people, and so they are afraid to do that.

Do you think that is a factor?

Mr. **Merola**. I do not know enough about it, but I have seen that allegation. There is some indication that the mechanism which has been devised for the issuance of some of these grants would indicate that certain vocal, political groups would get these particular grants, as far as that is concerned. That is certainly something that ought to be looked at, but I think that if you upgrade it and put in the minimal standards, and so forth and so on, I think that would cure some of the more basic problems.

Senator D'**Amato**. Let me ask you one other question. What, if any, educational qualifications are there or minimum standards, if there are any, which you are aware of for the public day care centers in New York City?

Mr. **Merola**. Well, I alluded to that. My understanding is that you need an eighth grade education to be a teacher's aide. You need a high school education or high school equivalency to be a teacher's assistant, and to be a teacher, you need a degree in early childhood education, but all of these standards are far much lower than the standards that we apply to people whom we employ within the kindergarten system. So that should be upgraded. There is no question about that.

Some of the individuals that we alluded to in the testimony, I think they were aides.

Senator D'**Amato**. Did any of them have high school degrees?

Ms. **Borko**. Many of the requirements seem to be waived, depending upon how the day care center is run.

Mr. **Merola**. Another wrinkle.

Senator D'**Amato**. Do you mean even the eighth grade requirement was waived?

Ms. **Borko**. We have run across teachers who are group teachers and do not have college educations but because of their 8 years of experience within the day care system, they were deemed qualified to run a classroom.

Senator **Specter**. Would you identify yourself for the record, please?

Ms. **Borko**. My name is Nancy Borko.

Mr. **Merola**. She is the head of our domestic violence unit.

Senator **Specter**. Thank you.

Ms. **Borko**. We do not know any guidelines for waiving these standards, but they are certainly waived in most of the day care centers which we have investigated.

Senator D'**Amato**. Pursuing the line of questioning that Senator Specter undertook, were there to have been standards that were not waived, would not some of the cases that are presently underway now, you would not have had some of those people in that system? Some of those children would not have been molested; is that the case?

Ms. **Borko**. That is correct.

Senator D'**Amato**. So we had two obvious situations: minimum standards which were waived, in which some of the people who allegedly have committed these acts are now being charged, came through the loophole; and second, no criminal background check, which permitted others to come into that system as well.

So as a result of just two areas, I would like to get the National Association for Child Care Management to comment on whether or not they really think an eighth grade educational minimum, whether they should waive that. That would be a nice question to ask them, and I would like to get them before the committee and ask them whether they think we should waive that, and whether they think that they should simply not even have a background check on the person with respect to any criminal activity that may have been involved.

But had you had that situation, there would have been a number of children who would not have undergone these terrible situations.

Mr. **Merola**. Why not? Why not? Isn't the welfare of our children entitled to this?

Senator D'**Amato**. I believe so.

Thank you, Mr. Chairman. Thank you, Mr. District Attorney. Let me thank your staff and commend them.

Senator **Specter**. Thank you very much, Mr. Merola. We certainly do commend you for the outstanding job you are doing. We appreciate your being here, and we appreciate your having your assistant district attorneys here today.

On the colloquy that we have had about the broader problems of the criminal justice system, that is sort of beyond the scope of what we are talking about today, and we all understand—I certainly do—the limitations of manpower and the problems which lead you to the plea bargaining situation. That is a subject really for another day, but ultimately there will have to be leadership, which those of us in this room, the district attorneys and the U.S. Senate, will have to bring to bear on the kinds of responses which Senator D'Amato's questionnaires have produced.

You cannot send people to Devil's Island, and you cannot kill them. You cannot beat them, but you can incarcerate them. We are going to have to build 200,000 additional jail cells in this country to take care of the career criminals, and my instinct is that if we work at it hard enough, and we are just beginning in the Senate, and you have done a great job as a district attorney, that we can solve this problem along the way.

Mr. **Merola**. I want to thank you. I certainly agree with all of your sentiments, and I would just like to leave you with one thought. It was a 15th century penologist that said that society gets the criminals it wants.

Senator **Specter**. Well said and deserved.

We would like to turn now to a panel consisting of "Ron Smith," accompanied by his son, "Ernie," and "Mrs. Jones," and the request has been made that the faces not be photographed of these individuals. This is a public hearing obviously, and when someone appears here, the most that the subcommittee can do, speaking through its chairman, is to make the request of the media that photographs not be taken of the faces of the individuals. That request has customarily been honored, and it is being made here today.

With that request, we would like "Ron Smith," and that is not his real name, and his son, "Ernie," to come forth, and "Mrs. Jones" to come forward. Again, that is not the real name.

"Mr. Smith," "Mrs. Smith," "Ernie Smith," "Mrs. Jones," we welcome you here. Your full statement, Mr. Smith, will be made a part of the record, as will your full statement, Mrs. Jones, and for purposes of our proceeding, we would appreciate it if you would summarize them, leaving the maximum amount for questions and answers.

STATEMENTS OF A PANEL CONSISTING OF "RON SMITH," "MRS. RON SMITH," "ERNIE SMITH," AND "MRS. JONES"

Mr. **Smith**. Senators, ladies and gentlemen, good morning. Thank you for letting me, the father of a 5-year-old boy who has allegedly been molested in a day care center recently, discuss this horrible problem with you.

Some weeks ago, when my son's day care center was being operated as a summer day camp, I was able to leave work early on a Friday afternoon. I phoned my wife, who usually drops off and picks up our son, and told her that I was going to pick him up at the center.

I picked up my son at the center and as we were walking out to the parking lot, he hesitated, swallowed and blurted out: "Dad, Mr. M. tickled me." Mr. M. is the alleged molester at the center, a young male worker.

I asked my son where Mr. M. had tickled him, and he replied: "All over."

I asked him: "What do you mean, 'all over'?, and he replied, raising his voice: "All over, all over."

I asked my son: "When did he tickle you?", and my son replied: "At nap time."

I knew that something was wrong, and I did not discuss this with my son any more because I did not really know how to talk to him about the subject without alarming him.

My wife and I had not discussed the topic of child sexual abuse with him before. I drove my son home. When we arrived, I told my wife privately what my son had said and asked her to talk to him about it. We were both concerned because our son has never made up stories or told lies. He occasionally watches out for his 1½-year-old baby sister, and sometimes shows her how to play with her toys, sings to her when she is crying, et cetera.

My wife is a physician, and she occasionally treats 2- or 3-year-old victims of sexual abuse who have venereal diseases. My wife talked to our son at appropriate times over the weekend.

On Sunday morning, my wife told me that our son had disclosed to her that Mr. M had been fondling our son's genital and anal areas during the 2-hour naptime at the center for several days.

This alarmed me greatly, and at first we were afraid to do anything about it because we knew nothing about the worker who had allegedly molested my son, except his first name. We were afraid to go to the police because we did not know if their investigation would further traumatize our son or frighten him.

I was also afraid to tell the day care center director what had happened because I did not want her to alert this man as he could possibly disappear, and come back, and retaliate against my son at a later date. However, on that Sunday evening, I filed a complaint with the police.

The next day, a Monday morning, a police detective from the local child abuse division of the local police called me. I told him what had happened, and I said: "Please alert the day care center, but please keep my name confidential because I do not know anything about this man, and I know that you do not have his photograph or fingerprints. I do not want him to run away and come back and harm my son later on," and he said he would do this immediately.

I called the State and local health departments who regulate day care centers and day camps, and I asked them to please send me the regulations, and I told them briefly what had happened, and I said: "Please keep my name confidential."

The regulations arrived in the mail, and I was horrified to see that the only requirement in our State for a day care aide, a teacher's aide, is that he or she be over 16, and that is it. When I later received the regulations for day camps, which many day care centers become during the summer, I was even more astounded to see that the day camp regulations cover all kinds of things, such as numbers of toilets for boys, numbers of toilets for girls, types of garbage, how it is to be disposed of, and so on, but not a word about the number of workers per child, director and worker qualifications, nothing.

According to the day camp regulations, two teenagers, two molesters, or even one molester could look after a whole bunch of kids without any supervision, period.

The second week after this happened, the day care owner still did nothing. This day care center is a very expensive, and I am told one of the best day care centers in the area that we live in. It is part of a chain of day care centers.

At the end of the first week, the day care coordinator for the owner of the center calls me and says, "Why didn't you tell me about this on Monday morning when you first found out? Why did you not tell me that right away?"

I told her, "I was afraid to call you because you might inadvertently notify this man, and he might take off and retaliate against my son at a later date." I asked her, "Who owns this day care center? What is the name of the owner?" She replied, "It's a private, nonprofit corporation."

I said, "Do you have a board of directors that I can perhaps talk with at the next meeting and tell them that parents are very upset about these kinds of situations?" I was not nasty to her or anything. I said, "This is something that I feel very concerned about as a father. I do want to talk to your board of directors and bring this to their attention."

She put me off, and she said she did not know when the next board of directors meeting was.

In the middle of the second week, the day care owner still does not say a word to any of the other parents about this. In the meantime, during the first week my son had been interviewed by a police detective, social worker, and by a sexual abuse therapist at the local hospital.

Senator **Specter**. Is Mr. M continuing to work at the day care center while all of this is going on?

Mr. **Smith**. He was arrested on the third day after I notified the police.

Senator **Specter**. So he was not working beyond the third day after the arrest?

Mr. **Smith**. Not as far as I know. He was released on a small bond, by the way, because he had no prior conviction.

Senator **Specter**. And how long ago was the arrest made?

Mr. **Smith**. I do not want to give you specific dates. I would say about a month and a half ago.

Senator **Specter**. What has happened with the processing of the case up to this point?

Mr. **Smith**. Sir, I cannot talk about the investigation. There is a grand jury looking into the matter. That is all I can say about that.

Senator **Specter**. Has your son, whom we are calling "Ernie," been asked to testify before a grand jury?

Mr. **Smith**. Yes, sir; he has.

During the first week the detective, social worker, and therapist had talked to my son and they all agreed that he was telling the truth. My son had given the detective the names of two other boys who he said had also been tickled by this alleged molester.

During the second week, as the school was still doing nothing about it, I went to the center parking lot, and I quietly told any parents that I saw, "Look. This is what has happened to my son. Please talk to your children and ask them if this man ever tickled them at nap time," and they said they would do so.

One or two parents said, "Can you really believe a 5-year-old child? You know, this is a very serious charge you are making." I replied, "It is not just me. There are three other professionals, a detective, a therapist, and a social worker who believes my son."

Senator **Specter**. Did the school ever make any inquiries among the parents of other children who were there to find out if Mr. M had molested the other children?

Mr. **Smith**. Not as far as I know, sir.

So I told the parents what had happened, and then I started hearing stories from the parents.

> Talk to Mrs. So-and-so. She withdrew her son suddenly from this place about a year ago. Talk with Mrs. So-and-so. She withdrew her son out of here recently.
>
> This man pushed my 5-year-old daughter into the swimming pool one time, and she is afraid of water. She is terrified of him, and 2 months ago I went up to him

and said, "Why is my daughter afraid of you?" He just sort of shrugged and backed away without really giving me any answer.

Senator SPECTER. Mr. M pushed her daughter into a pool?

Mr. SMITH. Yes, sir; then another one tells me that Mr. M was used perhaps as a sort of boogey man by the other staff. If a child were naughty, they would tell their child, "If you do not behave yourself, we will have Mr. M talk to you," and Mr. M would pull the child's ears or spank him. I am told he would also put his finger down the child's throat, except I do not know exactly what that means. Neither do the parents, many of whom are very naive.

Senator SPECTER. What is this about putting a finger down a child's throat? Did Mr. M do that to some child?

Mr. SMITH. That is what the parents told me. Many parents told me that.

Senator SPECTER. Do you know whether other parents had complained to the authorities at the school day care center about Mr. M?

Mr. SMITH. Two of the parents said that they had, but their complaints primarily were about physical abuse like spanking the kid or sticking his finger down the throat.

Senator SPECTER. Are you satisfied with the investigation being conducted by the police authorities?

Mr. SMITH. Yes, sir; they are doing a good job within the limitations and funding and authority that they have. The problem is that there are many holes in the regulations. The police will do so much. The social workers will do so much, and the health department does so much, and there are just too many holes in the regulations for our children to fall through.

So I finally got the social worker to agree that since the school was doing nothing, if I got all of the parents together that she would come and talk to us on one evening.

The local health officer contacted me, and she was very kind to me. She told me that she was very sorry that this had happened.

I said to her, "A lot of the parents are upset about this situation, and we need to do something about it. Can we meet with you or can we do something?"

She gave me the names of various local officials and State officials. I contacted them and got information about some work that was being done. I called up the staff of your committee. They sent me the bills that you have presented, and that is how I am here before you today.

During the third week, the social services and the health officer tried to get the names and addresses of the parents whose kids had been at the school during the summer session. After pulling many teeth, they were able to obtain these names, and a meeting was arranged during the fourth week at social services. The detective, the social worker, and the hospital child abuse Department of Education director was there, and they told the parents what the warning signals are, what you should and should not do, if child abuse is suspected.

That is when we realized that there were just a horrendous number of holes. For day camps, no regulations. For day care aides, they must be over 16, and that is it. There is no fingerprint, no police check, nothing.

Senator **Specter**. Mr. Smith, you say you are satisfied with the investigation and activities of the police department, but you are not satisfied with what the day care center has done, correct?

Mr. **Smith**. Yes, sir, this is a large, nonprofit chain. I heard nothing from them except at the end of the first week when I get this call, why didn't I alert them right away. At the end of the second week, I got a letter from their attorney, which is the most expensive law firm in the locality, and the letter is signed by the No. 2 man on the name of the law firm, and there are 29 attorneys listed in this law firm.

Senator **Specter**. Well, do you know what efforts, if any, that day care school made to determine what complaints had been made about Mr. M prior to the time that you complained about Mr. M?

Mr. **Smith**. Sir, it appeared to me that they were just covering the whole thing up.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF RON SMITH

Senators, Ladies and Gentlemen--Good morning/afternoon.

Thank you for letting me, the father of a 5-year old boy who has recently been allegedly sexually abused by a male day care center/day camp (hereinafter referred to as the Center) worker, share this unfortunate experience with you along with the fear, anguish, pain and anger of this discovery and frustration when I found that there are many institutional constraints and holes in the regulations of day care/camp centers for our children to fall through. I also want to share with you the rage and frustration I felt and still feel during the apparent ensuing cover up by the Center owner/operator and when I was told by other parents that this male worker may be homosexual/pedophile and that he had been physically and verbally abusing the children for some of all of the 2 years that he had been working at this Center. I felt very guilty because I had not paid more attention to the Center workers and that I was rarely able to pick up my son after work. My wife, who also works full-time, usually picked up our son from the Center because she got there before I could. What really grieves my wife and I was the fact that we had never warned our son that he could be sexually abused by adults that he would otherwise respect and trust and into whose care we had placed him.

My son is a young American Hero because although he and all the other children in the Center were afraid and some were terrified, of this male worker, my son was the only one who, even though he had never been warned and is only 5 years old, instinctively knew that what this male worker was doing was wrong and he was the only child who told his father about it.

As this case is now a police matter, please keep the TV cameras and photographers from identifying me or my family. For purposes of this testimony, I will assume the name of "Ron Smith," my wife's assumed name is "Mimi Smith" and my son's assumed name is "Ernie Smith." We have one other child, our daughter, who is 1 1/2 years old. All the names, locations and dates in this testimony have been changed or deleted so as not to jeopardize the current police investigation. The alleged molester is called "Mr. M."

My son had been going to this Center for over 1 year. During the summer (July and August) this day care center operates as a day camp. This well-known and expensive day care/camp center is one of a chain of day care centers located in two States that are owned and operated by a private non-profit Corporation. This Corporation (or its affiliate) also owns and operates a business institute. I estimate that the annual income of this Corporation is over $2,000,000 and that it pays little if any taxes. It appears to me that the Officers of this Corporation are probably being paid substantial salaries, benefits and tax breaks while the workers in the day care centers are paid minimal wages. My wife and I have paid well over $100,000 in income tax in the last 5 years out of an annual income of under $100,000.

If you check the telephone directory yellow pages in the Washington, D.C. Metropolitan area, you will find several corporations that own and operate two or more day care centers. In this era of working mothers and fathers, there are now big bucks and corporate chains involved in the day care business. These corporate day care centers are supposed to be providing a much needed service to the public, but, because of a lack of effective regulations some of them do not appear to be really interested in the safety and welfare of the children.

In the State in which I live, many of these day care centers operate as day camps during the summer. Many of the day care staff who have a college degree in early childhood education and are qualified as teachers and who are dedicated professionals, do not work in the day care center when it operates as a day camp during the summer. The reason for this is that in my State, a day care center is required to have a Director and senior staff members who must be over 21 and must meet certain minimal standards of education, training and experience, depending on the number of children in the day care center. The State regulations for a camp (day or residential) worker, however, have no requirements for age, education, training, experience or worker/children ratio. As the day care owner usually pays minimum or minimal wage to the workers in the summer camp, most of the qualified staff leave and seek re-employment when the summer camp is over and the day care operation resumes. The fees remain the same when the day care center operates as a summer day camp.

In my son's day care center, the children range in age from 2 to 6 years old. The children were usually in separate classes according to age. However, during July and August of 1984, when the day care center was operating as a day camp, there were only about 30 children who were combined in one class under the care of the alleged molester, Mr. M., and one or two female workers, and a Director who does not appear to have been there for the whole time.

I understand that from September, 1983 to June, 1984, the alleged molester, Mr. M., was an aide in the 3 year old class. The only State requirement for day care center aides is that they be over 16 years old and that they work directly under a senior staff member. The regulations for day camps, however, are completely different. They govern only such items as numbers of toilets for boys, numbers of toilets for girls, types of garbage and how it is to be removed, etc. Under the current State regulations it is possible for a molester to operate a day camp without supervision. I understand that during the month of July, 1984, Mr. M. was often the only worker in the center when it opened at 7:00 a.m. until the other worker(s) arrived.

Some weeks ago, when my son's day care center was being operated as a summer day camp, I was able to leave work early on a Friday afternoon. I phoned my wife who usually picks up our son and told her that I was going to pick him up at the Center. When I picked up my son at the Center and as we were walking to the parking lot, he hesitated, swallowed and blurted out: "Dad, Mr. M. tickled me." Mr. M. is the alleged molester at the Center. I asked him where Mr. M. had tickled him, and he replied: "All over." I asked him: "What do you mean, all over?" and he said, raising his voice: "All over, all over." I asked my son: "When did he tickle you?" and my son said: "At nap time."

I did not discuss this any more with my son as I did not know how to talk to him about this subject without alarming him. My wife and I had not discussed the topic of child sexual abuse with him before.

I drove my son home. When we arrived, I told my wife privately what our son had said and asked her to talk to him about it. We were both concerned because our son has never made up stories or told lies. He watches out for his 1 1/2 year old baby sister and sometimes shows her how to play with her toys, sings to her when she is crying, etc. My wife is a physician and she occasionally treats 2 or 3 year old victims of sexual abuse who have venereal diseases. My wife talked to our son at appropriate times over the weekend. On Sunday morning my wife told me that our son had disclosed that Mr. M. had been fondling our son's genital and anal area during the 2 hour nap time in the Center for several days.

We were initially afraid to call the police because we did not know if their investigation would further traumatize our son or if this could bring about retaliation against our son because we knew nothing about Mr. M. I contacted the local police and filed a complaint against Mr. M., with a request that my name be kept confidential.

On Monday morning, I received a phone call from a police detective from the Child Abuse Division. I told him what my son had told me and my wife. I told this detective that my son was at home and would be kept at home until this matter was cleared up, but that Mr. M. was probably at the Centerwith the other children. I told this detective that I wanted my name to be kept confidential because I was afraid of reprisal against my son from Mr. M. or others.

I asked the Detective to please alert the Center about the potential danger to the other children from Mr. M., and he said he would do so immediately. I also phoned the Local and State Health Department Day Care Licensing Divisions, mentioned this incident and asked that the regulations be mailed to me. On Monday afternoon, a child abuse specialist from the Social Services Department phoned me and then came to our home in the evening. This Social Worker first interviewed my wife, son and me together and then interviewed my son alone. When she finished, she told us that she felt that our son was telling the truth about the alleged abuse.

On Tuesday, my wife, son and I were interviewed together by another police detective from the Child Abuse Division, who had been assigned to this case. At this time, my son gave us the names of two other children who, he said, had also been "tickled" by Mr. M. After talking to our son alone, the Detective told us that he felt that our son was telling the truth. The Detective also said that at this age, children do not usually tell lies about such things. The Detective then phoned the Sexual Assault Center in the local hospital and made an appointment for us.

On Thursday, we went to the Sexual Assault Center and were interviewed together by a Therapist. The Therapist then interviewed my son alone. The Therapist told me that she felt that my son was telling the truth about the alleged abuse. No physical examination was done at this time because my wife, who is a physician, had already made a preliminary visual examination during the previous weekend. On Thursday, my wife told me that the Social Worker had phoned and told her that the Detective had arrested Mr. M. on a charge of child sexual abuse.

The State Health Department Day Care regulations arrived in the mail and I was shocked to see that there was no requirement for a pre-employment police check of day care workers, just as there is for taxi-cab drivers, bank workers, etc.

On Friday, I phoned the Local Health Department Director, Dr.__. She expressed great concern for my son and her sorrow about the alleged abuse. She told me that this Center was one of the best run in the area and that she was shocked when she found out about this alleged incident. I told Dr.__ I would like to suggest improvements to the day care regulations to prevent the children from being abused by the staff. I suggested that as a first step, a police check should be made mandatory for all present and future day care employees, just as it was for cab drivers. Dr. __ said that she would also try to work on this problem and gave me the phone numbers of several local and state officials and legislators who could help reform the day care regulations. I called many of these persons and found that state legislation was being prepared to prevent child abuse in day care centers. I advised Dr. __ about this draft legislation. Dr. __ thanked me and said that if the draft legislation was appropriate she would request that the Secretary of the State Health Department co-sponsor this legislation in order to give it a better chance of being passed in the State Legislation. On Friday, I phoned the Detective and he said that he had arrested Mr. M on Wednesday. He said that Mr. M had been released on a small bond and that Mr. M had no prior record.

On Friday, the Day Care Coordinator for the Corporation that owned the Center, phoned me and demanded to know why I had not told her about this alleged incident on Monday. The Coordinator told me that she only found out about this alleged incident after Mr. M had been arrested 2 days ago. I told her that a police detective must have called the Center on Monday, to alert the Director about the potential danger to the children from Mr. M. per my request. (I later called the first police detective I talked to and he said that he did, in fact, call the Center immediately after talking to me on Monday.) I told the Coordinator that I did not call the Center myself on Monday, because I feared that Mr. M might get wind of my complaint, disappear and retaliate against my son at a later date. I asked the Coordinator for the name of the owner of the Center. She told me that the Center was owned and operated by a non-profit corporation. I asked her if I could talk to the board of directors of this Corporation at their next meeting and urge them to scrutinize all the present and future day care staff to ensure the safety of the children who range in age from 2 to 6 years. She put me off by saying that she did not know when the next meeting would be. She did not apologize to me for this alleged incident or express any concern for the welfare of my son. She did not express any concern for the possibility that Mr. M. may have sexually abused other children at the Center.

During the second week, I called the offices of the United States Senators from my State and my Congressperson and asked their staff if anything was being done to protect the safety of very young children in day care centers. I was told about the legislation that had been introduced and asked that copies of S 521, S 1924 and HR 5486 be mailed to me. I spoke to a staff member of this subcommittee and offered to provide testimony if it would be helpful in this regard. This is why I am here before you today.

During the first week, my son stayed at home with the lady who takes care of our 1 1/2 year old daughter. However, he missed his friends in the Center and repeatedly asked to be with them. When I spoke to the Coordinator on Friday, at the end of the first week, she assured me that Mr. M was not going to be at the Center any more and that the Center Staff had been instructed to contact the police immediately if they saw Mr. M on or near the Center premises. I let my son go back to the Center during the second week so that he could see his friends again with the understanding that this was going to be his last week there and that he should say goodbye to his friends. I did not want my son to feel that he was being punished for telling the truth by being kept at home. My wife went to the Center during her lunch hour every day of the second week to verify that our son was all right. I regulated my work hours so I could leave a little earlier during the second week and pick up my son at the Center. On the first day of the second week, I called the Center and told the staff member who answered the phone, that I did not want them or anyone else to discuss this matter with my son. I reminded this person to contact the police immediately if anyone saw Mr. M on or near the premises.

On Wednesday of the second week, as the Center did not disclose the arrest of Mr. M on a charge of child sexual abuse to the parents, I decided to do something about it. I suspected that some other children may also have been abused. After picking up my son from the Center in the evening (my wife stopped by and took him home a few minutes later), I stood outside in the parking lot and quietly advised any parents I saw to talk to their children at home and ask them if they had ever been "tickled all over" during nap time by Mr. M as there may have been a problem. I had never spoken to any of the parents before and very few parents knew each other.

Many parents had guessed that something had happened to Mr. M as he was no longer at the Center. Some parents told me alarming accounts such as:

1. "Mr. M pulled by son's ears hard and stuck his finger down my son's throat many times. I complained about this to the day care center four times in person and three times over the phone, but nothing was done because Mr. M's sister is a supervisor in the nearby day care center that is a part of the same chain. See if you can talk to Miss _ who was a teacher here about 2 years ago. I think she tried to report Mr. M for physically and verbally abusing the children, and she left when nothing was done. Talk to Mrs._ also. I think Mr. M spanked her son."

2. "Talk to _'s mother. There was some problem with Mr. M and this little boy. The boy's parents suddenly withdrew their son from this center about 6 montha ago."

3. "Talk to _'s mother. Mr. M may have had a problem with her little boy. The boy's mother suddenly withdrew him from this day care center a few weeks ago."

4. "My 5 year old daughter was terrified of Mr. M. He pushed her into the swimming pool once and she is afraid of water. I went to him and asked him why my daughter was afraid of him. He sort of shrugged and backed away and did not give me

much of an answer. I think Mr. M was used as a sort of a Bogey-man by some other staff. If a child was naughty, the staff member would have Mr. M 'discipline' the child. Mr. M would verbally abuse and frighten the child into obedience, pull the childs ears hard or squeese the childs face hard, etc."

5. "After the summer session began, my 3 1/2 year old daughter has started kissing me on the lips like an adult. I am very concerned. I do not know what to do or how to talk to my daughter about this."

6. "After the summer session began, my 6 year old daughter started kissing me on the lips like an adult lover. I am really disturbed by this and do not like it at all but I don't know what to do."

7. "I am worried about my 5 year old daughter. The other night as I was putting her to bed she said: "Dad, lets play a game. Turn the lights out and lie on the bed". When I did so, she lay on top of me. When I asked her who had taught her this game, she replied 'Miss _ did'. (Miss _ was an aide at the Center who left a few months ago). I and my wife are both very worried, but we do not know what is going on at the Center. We do not know how to discuss this matter with our daughter."

8. "A few days ago, I got a call at work from the Center. I was told that a book case had fallen on my daughter's arm and that her hand may be broken. I was told to take her to the hospital. When I arrived at the Center to pick her up, I saw the kids running wild. Luckily, my daughter's hand turned out to be okay."

On Thursday morning, after hearing these alarming accounts, I phoned the Social Worker and advised her that parents were concerned about the possibility of misconduct by Mr. M. or others at the Center, but did not know what to do about it. None of the parents knew of Mr. M.'s arrest or the reason for his arrest and the Center appeared to be doing nothing about it. All the parents I had spoken to were very concerned about the safety of their children in the Center, but none of them knew what to do. I suggested to the Social Worker that if she could conduct a short seminar for the parents one evening to advise us about the warning signs of child abuse and what we should do about it, then I would rent or find a convenient meeting place for this seminar and invite all the parents I could contact to attend. The Social Worker said she, along with the Detective and the Director of Education from the Sexual Assault Center, would be glad to conduct a seminar for the parents.

On Thursday evening, I took several copies of a handwritten flyer with my name and phone number at the bottom and distributed these to the parents I met in the parking lot. The flyer stated that I was trying to arrange a child abuse prevention seminar with Social Services. Many parents offered to help in reforming the regulations to protect children from pedophile and aberrant day care workers.

On Thursday evening, about 2 weeks after my son told me about the alleged incident, I received a letter in the mail from an Attorney representing the Corporation that owned the Center. This Attorney is the second of five names on the name of the Law Firm. The letterhead lists 29 names in this law firm. I understand this law firm is one of the most expensive and best in the locality. The letter stated: "Mr. M. has been suspended pending the outcome of this case." The letter also stated: "I have reviewed the records pertaining to Mr. M's tenure at the school and am satisfied that there was absolutely no reason for the administration or staff to suspect the occurrence of any improper conduct on Mr. M's part prior to the current complaint."

On Friday of the second week, I had a consultation with an attorney and told him what had happened to my son and showed him the letter from the attorney representing the corporation that owned the Center. I told the attorney that I wanted to bring a landmark lawsuit against the day care corporation so that they and other day care center owners would pay more scrutiny to the persons they hire and to ensure that the children would not be verbally, physically or sexually abused in the future. The attorney advised me that not many parents would like to have a young child on the stand in a long court trial and that this was probably why few, if any, day care center owners had been sued for child abuse. This attorney told me that he knew the corporation's attorneys quite well and that they would fight this case tooth and nail in court and that my son could be questioned and cross-examined many times during the trial which could go on for months. My attorney advised me to think this over.

Later, on Friday evening of the second week, I received a phone call from one of the parents I had spoken to in the Center parking lot the previous evening. This parent said that her 6 year old daughter, who has a learning and speech disability, had just shown her where Mr. M. had touched her (her vagina) and that he would have her hold his (Mr. M's) penis. I advised this parent to phone the child abuse section of the local police and to try to talk to the same police detective who was handling my son's case. I also told this parent that the Detective, Social Worker and sexual assault center therapist were trained to talk to children and that they were excellent in talking to my son without intimidating or frightening him in the least. The parent did this immediately. My understanding at the present time is that the police cannot press charges against Mr. M. in the case of this 6 year old girl as her speech is unintelligible to anyone except to her mother, and the little girl would not be able to testify in court against Mr. M.

At the beginning of the third week, the Social Worker told me that it had been decided to arrange a meeting for the parents in her Department. She said that the day care Corporation was stalling on releasing the names and addresses of the parents of the children in the summer camp. On Thursday of the third week, after pulling many teeth in the day care corporation, and after the local Health Department Director, Dr. __ threatened to suspend the license of the Center, the social worker told me that her Department had finally received this information and would notify the parents that a meeting would be set up on the evening of the Wednesday of the fourth week in the Department of Social Services. I asked her if when this meeting was over, I could talk to the parents for a few minutes to see if any more of them would like to work to try to reform the regulations for day care centers. She said that she thought it would be okay for me to talk to the parents.

On Thursday afternoon, one of the parents phoned me and said that the Vice President and Coordinator of the Day Care Corporation would be in the Center that evening to "get to know the parents and assure them that all was well and the situation was normal in the Center." I stopped by the Center that evening and quietly told the Vice President and Coordinator that the Corporation appeared to be treating our children like blocks of wood in a cold-blooded business and that the Corporation did not appear to be really interested in the rafety and welfare of our children. I told them that if they did not get the Corporation President to phone me the next morning there was a chance that I just might go before the Press. The Vice-President said that she would do so and added that the President was an attorney.

The Corporation President phoned me on Friday morning almost three weeks after I reported this alleged incident to the police. I told him that I was surprised that no one from the Corporation had personally contacted me to sympathize and ask if there was anything that they could do to help my son get over this incident. I told him that the impertinent letter from the Corporation's attorneys almost two weeks after the alleged incident, had added fuel to the fire that was burning inside me. I asked him if he had any children. He replied that he had none. I asked him how he, an attorney, had ever gotten involved in a day care business. The president replied that he himself had worked in a day care center about 10 years ago. He said that he would be happy to have me come and talk to the Corporation's Board of Directors. He also said that there was one vacancy on the Board of Directors. I asked the president what his salary was. He said it was not very much and that it barely met his expenses. I asked him if I could see the financial statement of the corporation. At first he said yes but then he said that he would have to know me better before showing me the financial statement. I told the president that he was sitting on a time bomb and that he better do the right things and do them quickly. I asked him why it took so long to give the summer parents list to Social Services and what about the list of all the parents whose children had been enrolled in this center during Mr. M's tenure at the Center? He said that it would take a very long time to get the whole list because of a shortage of staff.

The parents seminar was held on Wednesday of the fourth week. I went early to the building and the suite where the Social Services Department was located and asked the supervisor if I could talk to the parents for a few minutes after the meeting was over. The Social Services Supervisor told me that the Attorney for the day care Corporation had contacted her and said that he did not want the parents discussing any matters pertaining to the Center after the meeting. The supervisor told me that I could not talk to the parents after the meeting. I and two other parents made the same request to her for a second time and again she denied the request. (I think she was afraid of the political clout of the Corporation's Attorney). Two Attorneys from the Office of the State's Attorney arrived and after conferring with them, the supervisor gave me the desired permission.

Some parents who came in just before the meeting began said that they had seen Mr. M outside the building as they were walking in. The Detective, who was one of the speakers, said that Mr. M was free to walk around outside the building.

During the meeting further alarming stories were related by some of the parents as follows:

1. "Mr. M was the Teacher's Aide in my son's class last year when my son was 3 1/2 years old. My son would constantly talk about Mr. M at home. I occasionally noted traces of make-up on my son's face after he arrived home. One afternoon I left work early and found my son with full female make-up on his face in the center. I was going crazy because I did not know what the staff in the center were doing to my son. My son's teacher said that it was just a game, like fancy dress. One evening, my son said that Mr. M wanted to take him home because Mr. M had a choo-choo train. I pulled my son out of this center and transferred him to the branch about 2 miles away. I almost passed out when I saw that Mr. M's brother worked there."

This parent has since told me that her son recently gave her detailed instructions on how to take a bus and go to Hershey, and how to take an airplane and fly to Miami, where she thinks Mr. M has relatives.

2. "Shortly after the summer camp began, my son would start crying upon arriving at the center in the morning. Another worker at the center told me privately to withdraw my son, but she would not tell me why. I went to the director at the center and told her that Mr. M was a punk (homosexual) and that I was pulling my son out of this center. The director told me that I was making a very serious charge. I said that if Mr. M touched my son I would beat him up."

3. Many parents also complained about Mr. M sticking his finger down their child's throat.

4. Some parents said that just before they got the letter from Social Services announcing the meeting, the Corporation staff phoned them and said that the Corporation was arranging this meeting in the best interests of the children. The parents said that the Corporation was trying to take the credit for arranging this meeting in spite of the fact that it released the parent list with great reluctance.

Senators, please pass whatever Federal Laws and Regulations you can to protect the safety of very young children in day care centers and camps. We do not want to see our children grow up into twisted adults or sexually hyperactive teenagers and adults because they were sexually abused or stimulated at an early age. I offer the following thoughts for your consideration:

1. Require that a child day care center or camp should have signs posted outside with Police, Social Services and F.B.I. phone numbers and locations so that the public may make a confidential complaint if child abuse is suspected.

2. Extend the Federal Civil Rights Act so that it can be applied to protect persons of a very young age, say, below 13

years. It presently applies to persons who are over 40 years old.

3. Require F.B.I. checks of owners and operators of child day care centers and camps, and all staff including janitors and persons who come to the center for short periods of time on a regular basis, such as maintenance workers.

4. Require that all staff in (3) be made to sign a monthly statement where they promise that they have read (or have had read to them in case they are illiterate) all the Federal Laws and regulations pertaining to child abuse and that they promise that they will not abuse the children entrusted their care in any way, shape or form.

5. Make child sexual abuse in day care centers, camps and schools a Federal offense. Create special small Federal courtrooms where child sexual abuse cases may be tried in such a way that the children may not have to face the alleged molester.

Senators, let us go back to the concerns posed by the attorney I had a consultation with.

Can we put a 5 year old boy on the stand in open court in an attempt to force a landmark decision against a large day care corporation? The 5 year old boy will have to face the alleged molester and highly skilled and expensive attorneys for the day care corporation in a lengthy court battle.

I say "YES" and my 5 year old son says "YES" and my wife says "YES". Our children will fight back against child sexual abusers. With our help and your help our children demand

JUSTICE. My son knows that his parents and are by his side. Senators, my son knows that you are his friends and that you are behind him.

Senators, this evening I will receive several copies of the police photo of the alleged child molester. I will put one of these photos up on a dart board and my 5 year old son and I will throw darts at it. We will squirt ketchup and mustard on another photo of the alleged child molester. We will draw Mickey Mouse ears on another photo of the alleged child molester. We will then throw these photos of the alleged child molester in the trash where they belong. We will scribble on another photo of the alleged molester and tear it up so that my son feels that this person is just a paper tiger--a scaredy cat.

Senator **Specter**. Let's turn now to Mrs. Jones.

Thank you for submitting a statement. It will be made a part of the record in full, and we would like to ask you to summarize it to the extent you can, please.

STATEMENT OF "MRS. JONES"

Mrs. **Jones**. Thank you for inviting me here to speak.

In July of last year my 5-year-old son, along with with other boys, were sexually abused by the director of a summer camp program sponsored by the Howard County Department of Recreation and Parks. The individual who committed these offenses, Thomas Ayers, has been convicted and was sentenced on June 7 of this year to 18 months in prison and 5 years' probation with treatment.

On August 9, a panel of three judges refused Mr. Ayers' request for an early release from jail, citing the need to demonstrate societal disapproval. According to his physicians, Mr. Ayers' diagnosis is egodystonic regressed homosexual pedophilia. He is a man who finds young boys sexually attractive and has great difficulty resisting the temptation to touch them on the genitals.

In 1981, Mr. Ayers was convicted in Virginia on a misdemeanor charge of assault and battery. The victim was a juvenile. The judge in that case sentenced Ayers to a 6-month suspended sentence, placed him on probation for 1 year, and ordered him to receive psychiatric counseling.

Senator **Specter**. Mrs. Jones, are you referring now to the individual who was convicted of molesting your son?

Mrs. **Jones**. Yes; in other words, he was hired by the county as the director of the summer camp.

Senator **Specter**. Had he been convicted prior?

Mrs. **Jones**. Yes, that is what I am saying. He had a prior conviction in Virginia.

Senator **Specter**. And what happened to him on that prior conviction?

Mrs. **Jones**. He was sentenced to 6 months suspended sentence, placed on probation for 1 year.

Senator **Specter**. And when did that conviction occur?

Mrs. **Jones**. That occurred in 1981.

Senator **Specter**. Did he have any record prior to that time?

Mrs. **Jones**. Not that I know of.

Senator **Specter**. But after 1981, he was then hired by the day care center where your son attended?

Mrs. **Jones**. It was the Howard County Department of Recreation and Parks.

Senator **Specter**. And he was convicted of molesting your son?

Mrs. **Jones**. And two other boys.

Senator **Specter**. And sentenced to 18 months in jail?

Mrs. **Jones**. Right.

Senator **Specter**. When did he start to serve that sentence?

Mrs. **Jones**. On June 7.

Senator **Specter**. Of 1984?

Mrs. **Jones**. Of this year, yes, as far as I know, unless he may be eligible for parole.

Senator **Specter**. Thank you for that clarification. You may proceed.

Mrs. **Jones**. Despite this previous conviction, Mr. Ayers appears to have had little difficulty in subsequently obtaining positions which placed him in close contact with children in Maryland. From August 1982 to March 1983, he worked as a residential counselor for delinquent adolescents at Bowling Brook Boys Home in Carroll County. In the spring of 1983, the Howard County Department of Recreation and Parks hired Ayers as a lacrosse and softball instructor on the recommendation of Baltimore County officials.

He was then rehired as the director of the summer camp which my son attended with approximately 140 other children between the ages of 5 and 12 by Howard County officials who believed that Ayers displayed an exceptional ability to teach children.

Ultimately the fact remains that had a national criminal records check been required as a condition of Mr. Ayers' employment, my son and the other boys would not have been molested.

Furthermore, there is no way of knowing how many other sexual assaults on children could have been prevented had Mr. Ayers and others like him been screened in this manner. This, of course, is true not only in Maryland, but throughout the country.

For example, in Texas, authorities found that one children's homeworker charged with molesting three young girls had served time in prison on two murder convictions, and the Miami babysitting operator, which Senator Hawkins referred to, Francisco Fuster Escalona, was on probation from a 1982 conviction for lewd and lascivious behavior toward a 9-year-old girl when he molested the children under his care.

Clinical studies indicate that a child molester abuses an average of 68.3 young victims. Moreover, experts conservatively estimate that the recidivism——

Senator **Specter**. Mrs. Jones, pardon me for interrupting you, but is it your request that you not be photographed?

Mrs. **Jones**. Yes.

Moreover, experts conservatively estimate that the recidivism rate among child molesters is at least five times greater than is reflected in official criminal records and that it may not be unthinkable, given that the nature of the problem is compulsive, repetitive behavior, that actual recidivism approaches close to 100 percent.

Even so, some may argue that FBI checks will not weed out the majority of pedophiles who seek positions as child care workers since the sexual abuse of children has been grossly underreported, and few molesters have been prosecuted and convicted. However, recent media attention certainly has brought greater public awareness.

It is, therefore, reasonable to expect greater numbers of convictions in the future. In addition, no one is claiming that this type of background investigation guarantees 100 percent protection. Rather, it is one necessary step that can be taken to lower the risk of harm being done to children from those with prior history of violent, assaultive behavior.

My husband and I were pleased to learn last week that our county executive, J. Hugh Nichols, can now be counted among those who agree that these checks are needed. He has stated that the department of recreation and parks will request FBI criminal records checks on its employees who work with children.

However, we also learned that county governments may not have the authority to request such checks. According to a Department of Justice spokesman, the FBI will not disseminate this kind of information to local governments unless there is a Federal or State statute which specifically authorizes it to do so. Maryland presently has no such statute, although a gubernatorial task force is drafting legislation to mandate FBI checks on anyone who works with more than five children at any setting, public and private.

If, however, Maryland fails to act on this proposed legislation, my child will again be left unprotected from an individual like Mr. Ayers, unless the Federal Government requires that these checks be performed.

Furthermore, there have been others across the country who have been in favor of this child protection measure. The Adam Walsh Resource Center strongly recommends that this kind of legislation be adopted, and the Big Brothers/Big Sisters of America regard State and Federal criminal records as absolutely necessary.

In addition, the President's Task Force on Victims of Crime advocates national criminal records checks to prevent crime against children and concluded that legislation was urgently needed. The task force specifically recommended that legislation should be enacted to make available to businesses and organizations the sexual assault, child molestation, and pornography arrest records of prospective and current employees who have regular contact with children.

I would hope that the Congress would be in the forefront of this legislative effort.

Senator SPECTER. I agree. Go ahead. If you could summarize to the extent possible, we would appreciate it.

Mrs. JONES. Child molestation is one of the most serious crimes confronting society. Considering the likelihood that the molester will repeat his crime and that his victims frequently suffer long-term psychological damage and may themselves become molesters or other types of criminals, there should be no crime more deserving of massive efforts to prevent it.

A few statistics which were recently in the media illustrate the tremendous cost to individuals and to society as a whole that this crime engenders. It was reported on the television program entitled "The Hidden Shame" that 70 percent of the general prison population in this country has been sexually abused.

In addition, Dee Stern, M.S.W. and Louis Kopolow, M.D. discovered that an astonishing 80 percent of the adults that they treat as a team at the Psychiatric Institute of Montgomery County have a history of sexual abuse in childhood.

I am aware that questions have been raised concerning the privacy issue in regard to this legislation, but I believe that the overriding concern must be the protection and safety of our children. Children have rights, too. They have the right to be protected from these kinds of people.

Last, Margaret Heckler said, when interviewed about the New York City day care incidents, "Now that we know such things can happen, the Government has a role to play."

[The prepared statement of Mrs. Jones follows:]

PREPARED STATEMENT OF MRS. JONES

In July of last year my five-year-old son, along with two other boys, was sexually abused by the director of a summer camp program sponsored by the Howard County Department of Recreation and Parks. The individual who committed these offenses, Thomas Ayers, has been convicted and was sentenced on June 7 of this year to eighteen months in prison and five years probation with treatment. On August 9 a panel of three judges refused Mr. Ayers's request for an early release from jail citing the need to "demonstrate societal disapproval."

According to his physicians, Mr. Ayers's diagnosis is of egodystonic regressed homosexual pedophilia. He is a man who finds young boys sexually attractive and has great difficulty resisting the temptation to touch them on the genitals. In 1981 Mr. Ayers was convicted in Virginia on a misdemeanor charge of assault and battery. The victim was a juvenile. The judge in that case sentenced Ayers to a six month suspended sentence, placed him on probation for one year, and ordered him to receive psychiatric counseling.

Despite this previous conviction, Mr. Ayers appears to have had little difficulty in subsequently obtaining positions which placed him in close contact with children in Maryland. From August 1982 to March 1983 he worked as a residential counselor for delinquent adolescents at Bowling Brook Boys Home in Carroll County. In the spring of 1983, the Howard County Department of Recreation and Parks hired Ayers as a lacrosse and softball instructor on the recommendation of Baltimore County Recreation officials. He was then rehired as the director of the summer camp, which my son attended with approximately 140 other children between the ages of 5 and 12, by Howard County officials who believed that Ayers displayed "an exceptional ability to teach children."

Ultimately, the fact remains that had a national criminal records check been required as a condition of Mr. Ayers's employment, my son and the other boys would not have been molested. Furthermore, there is no way of knowing how many other sexual assaults on children could have been prevented had Mr. Ayers and others like him been screened in this manner. This is of course true not only in Maryland, but throughout the country. For example, "in Texas, authorities found that one children's home worker charged with molesting three young girls had served time in prison on two murder convictions," and "the Miami babysitting operator, Francisco Fuster Escalona, was on probation from a 1982 conviction for lewd and lascivious behavior toward a nine-year-old girl" when he molested the children under his care (Newsweek, August 20, 1984).

Clinical studies indicate that a child molester abuses an average of 68.3 young victims (Newsweek, August 9, 1982). Moreover, experts conservatively estimate that the recidivism rate among child molesters is at least five times greater than is reflected in official criminal records and that it may not be unthinkable, given that the nature of the problem is compulsive, repetitive behavior, that actual recidivism approaches close to 100 percent (A. Groth and B. Longo, "Undetected Recidivism Among Rapists and Child Molesters," 1980).

Even so, some may argue that F.B.I. checks will not weed out the majority of pedophiles who seek positions as child care workers since the sexual abuse of children has been grossly underreported, and few molesters have been prosecuted and convicted. However, recent media attention certainly has brought greater public awareness. It is therefore reasonable to expect greater numbers of convictions in the future. In addition, no one is claiming that this type of background investigation guarantees 100 percent protection. Rather, it is one necessary step that can be taken to lower the risk of harm being done to children from those with prior histories of violent assaultive behavior.

It should be noted that there are precedents in my state, Maryland, for doing criminal records checks. Licensed in-home day care providers, prospective adoptive parents, foster parents, and school bus drivers are screened by the Maryland State Police. Furthermore, employers do request F.B.I. checks on individuals in positions of trust with regard to money and property, such as bank and racing industry employees, as well as security guards.

Nevertheless, when the use of federal and state computer checks was first recommended to Howard County officials, they stated that they understood such checks were illegal. Moreover, the Department of Recreation and Parks had taken no other measures to reduce the possibilty that they might again hire a child abuser to work with children in their programs. Therefore, On May 28, 1984 I asked to meet with Mr. J. Hugh

Nichols, County Executive, to discuss my concerns and present proposals which I felt would help safeguard children under the County's care from sexual assault. In addition, I obtained a written opinion from the State Attorney General's Office which concluded that there was nothing in State law which prohibits county governments from gaining access to both federal and state criminal history records of applicants for public safety jobs, as long as certain procedures and safeguards were followed. On June 4, 1984 Mr. Nichols agreed to have the Department of Recreation and Parks institute statewide computer checks on applicants in order to detect past criminal activities in Maryland. However, he would only consent to federal checks when the information received by the interviewer or from Maryland State criminal records looked doubtful. Since this procedure would not have uncovered Mr. Ayers's criminal record, my husband and I considered Mr. Nichols's response to be insufficient in this regard. Because we felt that not everything was being done that could be done to screen out individuals who posed a danger to children, we wrote to over fifty local, state, and federal officials and others interested in the welfare of children in an effort to enlist their support for mandatory criminal records checks of child care workers.

To date we have received thirty two responses which we have categorized as follows:

a. Those who will sponsor state legislation requiring criminal records checks (3)

b. Those who will or may sponsor state legislation to prevent child abuse but were not specific as to whether this legislation would concern criminal records checks (3)

c. Those who support criminal records checks (7)

d. Those who indicate an interest in criminal records checks (6)

e. Those who did not address the issue of criminal records checks (11)

f. Those who oppose criminal records checks (2)

Attached is a more complete summary of these responses.

It can be seen that although a number of the respondents did not take a position either way, there were still many more who were in favor of requiring federal records checks than were opposed. Howard County Executive J. Hugh Nichols can now be counted among those who agree that these checks are needed. My husband and I were pleased to learn last week that the Department of Recreation and Parks would request F.B.I. criminal records checks on its employees who work with children. However, we also learned that county governments may not have the authority to request such checks. According to a Department of Justice spokesman, the F.B.I. will not disseminate this kind of information to local governments unless there is a federal or state statute which specifically authorizes it to do so. Maryland presently has no such statute, although a "gubernatorial task force is drafting legislation . . . to mandate F.B.I. background checks on anyone who works with more than five children in any setting, public or private." (The Washington Post, "County Hits Snag Over F.B.I. Checks," Sept. 13, 1984) If, however, Maryland fails to act on this proposed legislation, my child will again be left unprotected from an individual like Mr. Ayers unless the federal government requires that these checks be performed.

Furthermore, there have been others across the country who have been in favor of this child protection measure. The Adam Walsh Resource Center strongly recommends that this kind of legislation be adopted, and The Big Brothers/Big Sisters of America regard local, state, and federal criminal records checks as "absolutely necessary." Legislation which addresses the issue has been proposed in New York State, and both Florida and California have enacted legislation along these lines:

> California, for example, will undertake a record check on school district employees; individuals in child care and home finding agencies and foster homes; marriage, family, or child counselors; teachers; or other employees or volunteers whose positions involve supervisory or disciplinary power over minors. It should be noted that several states have laws that permit national record checks on school teachers (six states), day care employees (three states), and school bus drivers (four states). (Department of Justice Review and Comments on S. 1924, June 11, 1984)

In addition, the President's Task Force on Victims of Crime advocates national criminal records checks to prevent crimes against children and concluded that legislation was urgently needed. The Task Force specifically recommended "that legislation should be enacted to make available to businesses and organizations the sexual assault, child molestation, and pornography arrest records of prospective and current employees who have regular contact with children." I would hope that the Congress would be in the forefront of this legislative effort.

"Child molestation . . . is one of the most serious crimes confronting society. Considering the likelihood that the molester will repeat his crime" and that his victims frequently suffer long term psychological damage, and may themselves become molesters or other types of criminals, "there should be no crime more deserving of massive efforts to prevent it." (Irving Prager, "Sexual Psychopathy and Child Molesters: The Experiment Fails," Journal of Juvenile Law, Vol. 6, 1982) A few statistics which were recently in the media illustrate the tremendous costs to individuals and to society as a whole that this crime engenders. It was reported in the television program entitled The Hidden Shame that 70 percent of the general prison population in this country had been sexually abused as children. In addition, Dee Stern, M.S.W. and Louis Kopolow, M.D. "discovered that an astonishing 80 percent of the adults they treat as a team at the Psychiatric Institute of Montgomery County have a history of sexual abuse in childhood." (The Washington Post, "Child Sexual Abuse," June 1984)

I am aware that questions have been raised concerning the privacy issue in regard to this legislation. But I believe that the overriding concern must be the protection and safety of our children. Children have rights, too. They have the right to be protected from these kinds of people. Lastly, Secretary Margaret Heckler said when interviewed about the New York City day care incidents, "Now that we know such things can happen, the government has a role to play." (Newsweek, August 20, 1984)

Analysis of Responses

1. Will sponsor legislation requiring criminal records checks:

    Senator Frank Komenda
    Senator James Clark, Jr.
    Delegate Robert Kittleman

2. Will/May sponsor legislation to prevent child abuse:

    Delegate Edward J. Kasemeyer
    Senator Howard A. Denis
    Senator Stewart Bainum, Jr.

3. Support criminal records checks:

    Elizabeth Bobo - Chairperson, Howard County Council
    Senator S. Frank Shore
    Delegate Joel Chasnoff
    Delegate Donald B. Robertson
    Ann Scherr - Harper's Choice Village Manager and former director of Howard County Sexual Assault Center
    Elaine Kirchner - Supervisor, Howard County District Office, Maryland Children's and Family Services
    R. Dale Headrick - Chairperson, Harper's Choice Village Board

4. Indicate interest in criminal records checks:

    Senator Thomas Yeager
    Ruth Massinga - Secretary, Md. Dept. of Human Resources
    Senator Charles McC. Mathias, Jr.
    Rep. Barbara A. Mikulski, Jr.
    Senator Paul S. Sarbanes
    Governor Harry Hughes

5. Did not address issue of criminal records checks:

    Mary Allman - Supervisor, Protective Services, Mont. County
    James H. Clark - Member, Howard County Council
    Col. Paul H. Rappoport - Chief of Police, Howard County
    William R. Hymes - State's Attorney for Howard County
    Neal Potter - Member, Montgomery County Council
    Esther Gelman - President, Montgomery County Council
    William E. Hanna, Jr. - Member, Montgomery County Council
    Rose Crenca - Member, Montgomery County Council
    Senator Margaret Schweinhaut
    Delegate Susan R. Buswell
    Senator Sidney Kramer

6. Opposed

    Charles W. Gilchrist - Montgomery County Executive - "inherent problems" (undefined)
    C. Vernon Gray - Member, Howard County Council - claims not necessary

Senator **Specter**. Mrs. Jones, are you satisfied with the efforts which were made by the prosecution authorities who dealt with your son's complaint?

Mrs. **Jones**. Generally, yes. Of course, you were talking about plea bargaining before, and we had to plea bargain because we did not wish our children to testify.

Senator **Specter**. But with the plea bargain, there was a sentence of 18 months in jail?

Mrs. **Jones**. That was not the plea bargain, as a matter of fact. The judge did not accept the plea bargain. The original plea bargain was no prison.

Senator **Specter**. No prison. Did you object to that?

Mrs. **Jones**. At the time, no, because we felt that or we were told that if we wanted more, our children would have to testify.

Senator **Specter**. And when the judge rejected the plea bargain, did your son then have to testify?

Mrs. **Jones**. No.

Senator **Specter**. There was just a guilty plea?

Mrs. **Jones**. He decided that he did not want to be bound by the plea bargain, and I believe he felt that that was too lenient.

Senator **Specter**. But at that point the defendant could have withdrawn his plea, but he chose not to do so, and the defendant stayed with his guilty pleas?

Mrs. **Jones**. Yes.

Senator **Specter**. And was sentenced to 18 months in jail?

Mrs. **Jones**. Right, on three felony counts.

Senator **Specter**. Do you know if any corrective measures have been taken by the day care center where your son was?

Mrs. **Jones**. Yes, many. I have gone to my county executive on May 28 because I had called 2 weeks prior.

Senator **Specter**. What steps did they take?

Mrs. **Jones**. Well, at my suggestion, they are developing a questionnaire to weed out pedophiles based on what the Big Brothers and Big Sisters of America do. They are training personnel to recognize clues that sexual assaults may be taking place. They had originally agreed to do State checks, but not FBI checks until this last week.

Senator **Specter**. How is your son now?

Mrs. **Jones**. My son is doing well. I was one of the lucky ones in that I had warned him. I had talked to him fortunately 2 months prior to the incident because there was a TV program on about an incident in Texas where a day care employee was taking pornographic pictures of children, and they had experts on TV who said that if your child is four or above you should speak to them about this kind of problem.

Senator **Specter**. And how old was your son at that time?

Mrs. **Jones**. Five.

Senator **Specter**. And you did speak to him?

Mrs. **Jones**. Yes.

Senator **Specter**. And you think that was a significant factor in assisting?

Mrs. **Jones**. I think that is why there was only one time, one incident, and he told me as soon as he hit the door, and he told the man to stop it. He would not.

Senator **Specter**. How did you handle the discussion that you had with your son in terms of what you said to him specifically? It is a rather delicate subject. How did you handle it?

Mrs. **Jones**. He said, "Guess what, Mom," and he started to tell me what happened, and I remained calm on the outside and very upset on the inside. He got the facts out.

Senator **Specter**. What had you said to your son prior to that time when you gave him a warning about what might happen?

Mrs. **Jones**. I just told him that no one is allowed to touch him in the area of the bathing suit and his private areas, that it was inappropriate, that if anyone told him to keep a secret that that was wrong, that he had to come to me and tell me, and he knew that. He said he knew that something was wrong, and he immediately told me.

Senator **Specter**. Mr. Smith, how has your boy, Ernie, been doing following this incident?

Mr. **Smith**. We have been very supportive of him. We told him that he was a real champion in telling us and although he and the other children had been afraid of this man for some time, I told him, I said, "Your mother and your father, we are both behind you." I said, "We will put a stop to this, and we won't let it happen ever again."

And I felt very sorry that we had not alerted him that things like this could happen to him.

Senator **Specter**. You think it is important for parents to alert children to the possibility of these things happening?

Mr. **Smith**. Absolutely.

Senator **Specter**. As Mrs. Jones did?

Mr. **Smith**. Absolutely.

Senator **Specter**. Senator Hawkins.

Senator **Hawkins**. Mrs. Jones, I believe you said that after speaking with your county executive that he said that he would have to have State law changed.

Mrs. **Jones**. Yes.

Senator **Hawkins**. And the State law that I believe you mentioned said that that would cover everyone who worked with children if they babysat more than five, but it would exempt five and under?

Mrs. **Jones**. Right.

Senator **Hawkins**. You understand that the man you mentioned in Miami has the license to do 5 and under, and in a short period of time he has babysat over 200 children. So I feel that that needs some——

Mrs. **Jones**. I would like to see as broad a bill as possible.

Senator **Hawkins**. Well, I think you should be aware of that when you go back and influence this legislature, which I am sure you are going to be very active, but I feel the five and under should be addressed also.

Mrs. **Jones**. I think the rationale behind that was that they felt it impractical to FBI checks on the neighborhood, you know, the 12-year-old girl or the 13-year-old girl who babysits, and that they had to come up with some kind of limitation.

Senator **Hawkins**. But with that limitation you understand that these sick people gravitate toward that type of license.

Mrs. **Jones**. Very well, and I understand there are many teenage babysitters out there who molest children.

Senator **Hawkins**. You bet. Thank you for coming today. You are a very brave lady.

Senator **Specter**. Thank you very much.

Mr. **Smith**. Thank you.

Mrs. **Jones**. Thank you.

Senator **Specter**. I would like to call now our next panel, Dr. Frederick Berlin, director of sexual disorders clinic, Johns Hopkins Hospital, accompanied by Mr. William Doe, which is an assumed name.

The request has been made by the man whom we are identifying as "William Doe" that he not be photographed. He, I am advised, will give testimony about his own activities as a pedophile, and the request is made that he not be photographed at the time that he testifies.

Dr. Berlin, Mr. Doe, we welcome you here. Your full statement will be made a part of the record, Dr. Berlin, as will your very extensive curriculum vitae. We appreciate your coming and look forward to your testimony.

STATEMENTS OF A PANEL CONSISTING OF DR. FREDERICK BERLIN, DIRECTOR, SEXUAL DISORDERS CLINIC, JOHNS HOPKINS HOSPITAL, ACCOMPANIED BY WILLIAM DOE

Dr. **Berlin**. Thank you very much for inviting me. I am grateful.

First of all, let me point out that I am coming at this from a somewhat different perspective since I am involved with a clinic that is trying to learn more about what motivates some adults to become sexually involved with children, and trying to learn a little bit more about what we can do hopefully to help such individuals to change.

I think some of the things that I say may be upsetting and may even sound rather radical. I am not a radical person and not an irresponsible person, and I hope that the comments that I make can be thought about carefully.

The time is short, and so there are really six points that I would like to make, and I would like to start with three, and then make three additional ones.

The problem, as I see it, involves (*a*) children, (*b*) men who become involved sexually with children, and (*c*) situations in which these children are particularly vulnerable toward the involvement with such individuals.

I think in order to find optimal solutions to this, we are going to have to deal with all three of those parameters. First of all, if I can start with the children, I think there are two issues with respect to the children. First of all, what can we do before the fact to try to keep these kinds of situations from materializing; and second, what can be done after the fact if, God forbid, such a situation does develop?

As far as before, I think we have heard a lot of people discussing the issue of educating children, and I think from our experience in working with men who become involved sexually with children, this is something that can be extremely useful. Many of these men are individuals who seem not to be able to say "no" to themselves, but a great number of them are men who can take "no" for an answer.

Now, I am not trying to put the responsibility on the kids. The responsibility is the adult's, but it still seems very prudent to educate children about how to avoid advances that might lead to difficulty.

I do think it has to be done very sensitively. I think we do not want to have children become fearful in situations where they should be able to trust, and we are in a sense talking a little bit about sex education, which is a delicate issue. In educating children about these kinds of things, we want to allow for the diversity of opinions that Americans have regarding how they want to raise their children when it comes to sexuality. So there is no doubt that they need to know not to become involved with adults, but it has to be done in a delicate way, and I do think that there ought to be legislation to assure that children do receive proper education in terms of how to protect themselves.

The second issue is what can be done with the children after the fact, and a concern that I have here, and I want to be particularly careful because obviously everybody here is well intentioned and are very anxious to be helpful, but we do have to assure the standard of care of those who are doing the counseling after the fact, to make sure that the kids are, indeed, actually being helped.

I have seen situations where children have had a great deal of caring and concern regarding the adult that they've become involved with, and we have talked a lot here about needing to respect children and listen to them, but we cannot in counseling them simply because of our own anger and frustration not allow them to express what they felt. We can confuse them a great deal in counseling them if we simply portray somebody that they care about a great deal in a one-sided way. We have to acknowledge their feelings and their confusion and respond to it.

At any rate, those are some of my thoughts about the children: legislating things to make certain that they are educated, maintaining a high standard with respect to those who are helping them.

The second issue is situations where kids are vulnerable, and I think the consensus is already in. I do not need to talk much about this. It is useful to have legislation to try to make certain that adults who have a proclivity to become involved with children should not be in situations of temptation, should not be in situations where children are at risk. So I do not think there would be any basis for opposing efforts to try to make certain that those who are tempted by children are not in situations where the kids are particularly vulnerable.

The third issue that I want to make at this point, and I am trying to be brief; I hope you will bear with me, is that I do not think that we can ultimately resolve this problem simply by dealing with victims and trying to help victims, as important as that is, and it is extremely important.

But it is not the victim's fault. It is not the child's fault that they become involved with an adult. If we are going to try to have prevention, we have to learn more about what it is that leads adults to become involved sexually with children, and hopefully through that understanding figure out ways of enabling such people to change.

One of the things that worries me a great deal is that we can develop the sentiment that supporting programs that are trying to learn more about these adults is somehow something that is done at the expense of programs that are supporting children. I think we have to do both. Unless we try to get at the cause, and the adults are the cause, we are not going to be helping children, and the best thing we can do to help a potential victim is to keep them from becoming an actual victim, and therefore, I think we need to address the issue of what to do with these men, as well.

Now, the final three points, if I can follow up on it, then relates to these men because I think very little of what you will hear is from people who have dealt with them, and I would like to share a little bit my experience with them.

Senator **Specter**. When you say men, Dr. Berlin, are you excluding women?

Dr. **Berlin**. There are some women who become involved sexually with children. It is clearly very much a minority. It is clearly the case cross culturally. So I do not think it is just because of the way in which we are raising children. Difficulty in controlling one's sexuality seems to be much more of a male versus a female problem. Many of the males have had this problem, if I can digress for a second to answer your question, were themselves victims. This is one of the things that particularly concerns us.

It appears that one of the dangers that is involved in children becoming prematurely active sexually with adults is that this can warp the way in which they later desire sex and affection. So in point of fact many of the men we are treating are the former victims, and we can either simply relabel them and say they are victimizers, or try to help them.

Senator **Specter**. But there are many young girls who are sexually molested as well.

Dr. **Berlin**. That often comes out, unfortunately, in ways that are also detrimental. Many go into prostitution. Their offenses are different.

Senator **Specter**. But the fact is that women are not pedophiles, do not sexually molest children?

Dr. **Berlin**. It's very rare. Ninety percent of the time it is a male phenomenon.

Now, to reassure parents, by the way, it is not something that affects everyone, just as cigarette smoking is a risk factor for lung cancer, most people who smoke do not get lung cancer. So we ought to stop smoking, but we should not feel that everyone who smokes will get lung cancer. It is a similar thing here.

If we look at a group of men who are attracted sexually to children, many of them were victims of child abuse early on in their life. On the other hand, if we look at a group of people who have been abused sexually, thankfully many of them for reasons we do not understand were immune to the affects and seem to do well. So parents ought not to panic, particularly if these kids can be counseled early on. Perhaps those who might have developed problems can be helped not to develop those problems.

At any rate, if I may make the final three points, and I will be glad to answer questions, there are certain beliefs that we have in this country that we hold dear that I think in some ways interfere with the resolution of these problems, and let me spell out a couple of them.

One is the belief that we are all created equal. Now, we all ought to have equality of opportunity, but we are not all created equal, and one of the ways in which we differ very much from one another is in the spectrum of human sexuality. None of us decides what the nature of our own sexuality is going to be. We discover this in growing up. Most of us are fortunate because as we grow up, we discover that we are attracted sexually to members of the opposite sex and to age appropriate members of the opposite sex.

I do not stay away from little boys sexually because there is a law that says I should stay away from them. I just do not have the slightest interest in becoming involved sexually with little boys. I am not having to constantly fight off the temptation of becoming involved with little boys in order to stay out of difficulty.

Senator **Specter**. Could you summarize your last two points, please?

Dr. **Berlin**. OK. The last two points are there is an assumption that anyone can control their behavior just by making up their mind to do so. As a physician, I am well aware of the fact that that simply is not true.

Another form of child abuse would be women who smoke when they are pregnant. We see many women who are trying their best to control themselves and cannot without professional assistance.

Now, what I am telling you is that there are men who cannot control themselves sexually without help. People tend not to believe that. They assume they are trying to beat the rap, to get away with something. That is not the case. They do need help, and we have to provide it.

The final issue is the issue of what are we going to do about these men. I have heard a lot of talk today, and it takes a great deal of courage, I think, for a man and his wife to come in here today to admit that he has had this problem because it is very much like leprosy used to be. These people are dangerous. We do not understand them. They scare us, and so we label them. We see them as less than human. I have heard words like vermin used today, that children are taught that people should be thought of as venom, as molesters with no sense of their humanity.

Senator **Specter**. Dr. Berlin, you have brought Mr. William Doe with you?

Dr. **Berlin**. I have.

Senator **Specter**. He is a man whom you have treated?

Dr. **Berlin**. Yes; I have, and if I can just finish this point because it is important, I will stop.

One issue is what are we going to do to protect society, and what many people here today have recommended is punishment. Now, we could lock these men away forever, but unless we are prepared to lock them away forever, we had better do something more because there are very strong penalties on the books right now.

Senator **Specter**. What do you suggest?

Dr. **Berlin**. If I could just finish, please. I do not mean to be rude, but I would just like to make the point, and I will make suggestions. May I?

Senator **Specter**. Yes.

Dr. **Berlin**. Every person who is in prison or who has committed this crime is an example of the failure of the fear of incarceration to deter that person. That has not been working. Every repeat offender, and there are numerous offenders, is an example of the failure of incarceration to modify their behavior.

As I said earlier, most of them are coming out. There is nothing about being in prison by itself that will change the nature of a person's sexual orientation or that will make it easier for them to resist giving in to sexual temptations.

Now, what do I suggest? Then I am finished with what I have to say. First of all, we are treating men in and out of prisons, and I do not want to turn this into an issue of whether they should be in or out, but what I am suggesting is that we cannot solve this simply by saying these people ought to be able to control themselves, and we are not solving it just by putting them somewhere. We have to figure out how to help these people change, and there are programs that are doing that, and I think that we need to try to support those efforts, and particularly in prison. Let me avoid the more hairy issue of what about the people who are out.

There are a lot of people who are in prison who are going to come out, and if not for their sake, and I am not embarrassed to say that I think we have to be humanitarians, and I do think that something should be said for their sake, but for the rest of our sakes, we had better stop simply pretending that we are going to punish them, they are going to learn a lesson, and they are going to be different. We had better get in there and help them to change.

Senator **Specter**. What is the nature of the program that you suggest, first, in prison, and second, out of prison?

Dr. **Berlin**. Well, I think the first thing is to recognize that we ought to have programs. There are many different kinds, and I will not get into denominational debates.

I will tell you about ours, but I certainly think we have first of all acknowledge that it is in the best interest of victims and society to get in the prisons or if men are in the community, to provide them with help.

It is going to be very difficult for them to come forward and ask for help in an atmosphere where they are afraid to acknowledge that they have this kind of problem because of the terrible stigma that gets directed toward them.

Senator **Specter**. What kind of help, Dr. Berlin?

Dr. **Berlin**. One of the things that we have been doing, and there are a number of others who are looking at it this way, is to recognize that just as an alcoholic is tempted to do things that he or she must not do, and just as alcoholism is very dangerous; if these people do not stop succumbing to that temptation, they can kill others. They get in cars, and it is a very dangerous condition.

Just as there are programs to treat them, we have similar programs, and they are based to a large extent upon that model, that groups of individuals, usually men, who have had difficulty in controlling themselves sexually, come together and discuss amongst themselves strategies for trying to learn how to resist those temptations. What are the early warning signs, which situations should be avoided, how not to get into difficulty, that sort of thing. I can go into detail if you like, but that is the general concept.

[Letter from Dr. Berlin to the subcommittee follows:]

THE JOHNS HOPKINS UNIVERSITY SCHOOL OF MEDICINE
THE JOHNS HOPKINS HOSPITAL

DEPARTMENT OF PSYCHIATRY
and
BEHAVIORAL SCIENCES

[illegible]
[illegible]
BALTIMORE, MARYLAND 21205

September 17, 1984

Senate Subcommittee on Juvenile Justice
United States Senate
Senate Office Building, 331 Hart
Washington, D.C. 20510

Dear Sirs:

I want to thank you very much for inviting me to speak before this committee. My understanding is that the committee is particularly interested in legislation that might help protect children from sexual involvements with adults. My expertise involves considerable experience as a physician treating men who have become involved with children sexually. It is imperative that children be helped in a sensitive and caring way, if they have become involved sexually with an older person. However, one cannot expect to appreciate what motivates an adult to become involved sexually with a youngster by counselling the youngster. Such behavior is not the child's fault. Our work has concentrated on trying to learn more about what motivates adults, usually men, to behave in such a fashion, in the hope that such knowledge might enable us to intervene therapeutically both to help the adult and to prevent potential victims from becoming actual victims.

I am enclosing a copy of a paper I have written about pedophilia (Sexual Attraction Towards Children), which I hope you will find time to review. It is important to note that many men who are sexually attracted to children as adults were themselves sexually active with adults when they were children. Thus, in treating a "victimizer," one is often in point of fact also treating a former "victim." Tragicly, a percentage of children who this very day are engaging in sexual activities with adults can be expected to experience some warping of their own sexuality in such a fashion that, as they grow older, they will desire recurrent sexual activities with youngsters.

In my judgment, we should not simply write these adults off by relabelling them as victimizers deserving punishment, but instead we should make available to them treatment programs that can help them overcome their sexual vulnerabilities. Data indicates that proper treatment can be effective. Preferably, access to such treatment should be made available early on in life, if possible, but help needs to be available later on in life as well. Many parents, who, perhaps, understandably, are now advocating for strong punishment against men who become sexually involved with children may come to feel quite differently in the future if, God forbid, their own child as a result of premature sexual activities, develops a sexual aberation such as pedophilia.

As far as my recommendations for protecting children are concerned, I would state the following:

(1) Children should be sensitively educated regarding the privacy of their bodies and taught how to say "no" if sexually propositioned. They also should be taught not to keep secrets from either parent that relate to sexual issues. Although many men who become sexually involved with children seem unable to say no to themselves regarding such tempations, the overwhelming majority are not rapists, and can accept no for an answer. Knowing that children will not keep secrets can also be an effective deterrent. I should emphasize, however, that it is not the responsibility of children to stop such sexual activities.

Nevertheless, teaching children the above principles, possibly even in a legislatively mandated fashion, seems prudent.

(2) There should be screening of all applicants who are in jobs such as those involving work in day care centers regarding any prior legal history of sexual involvement with a child. Legislation mandating the maintenance and sharing of such records between states might be useful. Obviously, this must be done sensitively with proper respect for civil liberties and in a way that will not cause unfair or unnecessary problems for those so convicted.

There are no psychological tests that can reliably identify those who are attracted sexually towards children. The only factor invariably common to men who become sexually involved with children is the fact that they have become involved with children. They can differ from one another considerably in intelligence, occupation, temperament, character, sense of social responsibility, conscience, and so on. Thus, in my judgment, any effort to require psychological screening would be improper.

Although working with children is an extremely important and valuable service deserving of adequate pay, sexual involvement with children is not an exclusive trait of the poor but rather crosses all socio-economic lines. Thus paying more to day care workers, though a worthwhile goal, is not necessarily in and of itself a guarantee of protection against sexual involvements with children. Requirements that representatives of existing agencies periodically educate and speak with children in day care facilities might be useful.

(3) Treatment programs must be made readily available to adults who are sexually attracted to children where they can receive help. There are few such programs available at present. Virtually none receive public funding. Because society is so terribly stigmatizing towards adults who experience such temptations, it is often difficult for such persons to come forward seeking help. This needs to change. This problem cannot be solved through legislation alone. It is important to recognize that incarceration alone, while extremely expensive to the taxpayer, has not been working and that it cannot be expected to work. Severe legal sanctions have been on the books in most jurisdictions for many years. Every first offender is an example of the fear of incarceration having failed to deter such behavior. Every recidivist, and unfortunately there are many, is an example of the failure of incarceration as a method of changing such behavior. There is nothing about being incarcerated that will help a man who is sexually attracted to children become less so. There is nothing about prison that helps a person who has had difficulty resisting sexual temptations become more capable of doing so.

In my judgement, it is imperative that we not fall into the trap of thinking that treating adults who become involved sexually with children is something less imperative than helping the children themselves. Both must be done as part of an overall package. Prevention, the ultimate form of treatment, can only come from success in helping adults overcome the temptation of sexual involvements with children. Many such persons are in all other ways productive and responsible members of society. However, many of them seem unable to control their sexual behavior without proper professional assistance. Again, it is important to emphasize that in treating such persons, one is in point of fact also often treating a former victim--a victim, either of biological pathologies, or of psychological scarring secondary to early life experiences. It is not clear to me that such persons deserve to be treated any less kindly simply because they have grown older.

In summary, the issues being discussed here involve (1) children, (2) adults who become involved sexually with children, and (3) the relationship between adults and children in various institutions such as day care centers. Unless all three of the above parameters are adequately addressed, effective solutions will prove difficult. The children must be educated and counselled, facilities such as day care centers must be legally regulated, and the adults must be afforded needed help. When an adult is willing to risk years of incarceration to have sex with a child, something is terribly wrong, and in need of repair. In my judgment, a punitive atmosphere of hatred and vindictiveness which stigmatizes and scorns any and all adults who become sexually involved with children with little interest in understanding or helping them only serves to retard the search for effective solutions.

If you would like any further information in addition to enclosing the paper alluded to earlier, I have enclosed a list of questions to which I would be more than happy to respond. I would, of course, be quite happy to answer any other questions as well. Once again, thank you very much for your kind consideration.

Sincerely,

Fred S. Berlin, M.D., Ph.D.
Assistant Professor
The Johns Hopkins University
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Co-Director, The Johns Hopkins
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Senator SPECTER. Let us turn at this point to Mr. William Doe, who has asked that he not be photographed.

Before Mr. Doe starts, Dr. Berlin, would you give us just a thumbnail sketch as to Mr. Doe's background?

Dr. BERLIN. Well, I will, and I will keep it very thumbnail to protect his identity, but here is a person who most of his life has been sexually attracted to young males, not only sexually, but desires affection and physical intimacy.

He, himself, by the way, was a victim when he was younger. He was involved with an older fellow who had sex with him when he was a young man.

In terms, particularly of the committee's interest, he has been a person who has worked in situations around children, including teaching them music, involvements in church choirs, and so on, and he is a person who in spite of some prior times of being apprehended, had been able to move on and get similar positions subsequently.

I can tell you that being in our program, he has stopped that kind of work. We have helped him to understand that he needs to do that. Perhaps that will give you some feeling though about him. He is an intelligent and educated person, and he is a family person, married. His wife is here today. He is the father of three children, and he has not been involved with those children.

Senator SPECTER. Mr. Doe, we appreciate your being here. We realize it is not an easy role to testify on, and we look forward to hearing your testimony.

STATEMENT OF WILLIAM DOE

Mr. DOE. Thank you.

I would like to just go on record as saying that I am here for the interest and protection of the children as well. It appears perhaps at first that there are two sides, the victims and the perpetrator. My interest in being here is also for the children.

If this problem, you know, were addressed when I was young, perhaps I would be a person that would not have been molested myself. Maybe in that case I would not be a sexual child abuser.

Under Dr. Berlin's case, I am pleased to say through the therapy each week, through the use of Depo-provera, I feel now I am confident that I do not need to molest any longer. Perhaps in these cases, it can draw the family closer together; it can drive them apart. In our case, it pulled us very close together.

Try explaining some time to a 14-year-old son that you are a child molester. It does not feel very good.

Senator **Specter**. How old are your children, Mr. Doe?

Mr. **Doe**. I have a daughter that is 22, a son that is 20, and another son that is 14.

Senator **Specter**. Tell us a little bit about your own experience as a child where, as Dr. Berlin outlines, you were a victim of child molestation.

Mr. Doe. When I was about 7, anywhere between 7 and 9—I do not remember the proper age—this was in a public bathhouse, I was raped by someone, I would say, in his early twenties. As an early teenager, I was molested a number of times by various people.

You see, as a child, perhaps when many of us were young, it was explained to us: Don't get into strangers' cars. Don't talk to strangers. Don't accept candy from strangers. But it was never said why.

Now, thank God, this is coming out of the closet, and children are learning why. Parents are not so afraid any more to explain to them about proper touching, improper touching.

Senator **Specter**. Do you believe as a result of the molestation which you suffered that it made you a child molester?

Mr. **Doe**. Maybe partly. How much this played, I really do not know. There is a desire in me.

Senator **Specter**. Mr. Doe, is it your request that you not be photographed?

Mr. **Doe**. Please.

I think there may be more to it than that in my case. As in many molesters, there is a desire for love of a male, that is, of a father, a very normal type love that most children receive. I do not feel that I have ever received that, and as a consequence, I try to impose perhaps my love and want love from a child. That can work very effectively and can make one a very effective teacher. Unfortunately in my case that goes far too far and leads toward fondling.

I have tried to stop how many times, and I have received counseling, and here is perhaps a valuable point. It is not just counseling that is important, but perhaps the type of counseling.

Counselors that deal with this problem, that know what they are doing, as I say, I have received counseling three times before. It is very easy to size up if a counselor knows what they are talking about or if they do not know what they are talking about.

Senator **Specter**. Mr. Doe, you are here voluntarily and obviously any questions which you are asked, you are free not to answer.

Mr. **Doe**. I will be glad to help in any way I can.

Senator **Specter**. If you find any of them objectionable, you may choose not to do so.

Have you ever been convicted of child molestation?

Mr. Doe. Yes, I have, fourth degree.

Senator **Specter**. And what sentence, if any, did you receive?

Mr. **Doe**. I received 3 years' probation. It would have been 6 years run concurrently. The terms of probation were that I receive counseling and the use of Depo-provera, that I explain to any prospective employer, whether it was working with children, whether it was working as a shoe salesman, or whatever, that I explain to them that I am on probation and why. No. 3, that I may not be employed working with children at all.

Senator **Specter**. When were you convicted?

Mr. **Doe**. I believe it was July 9 of this year.

Senator **Specter**. So you are on probation now?

Mr. **Doe**. That is correct.

Senator **Specter**. And that is your only conviction?

Mr. **Doe**. That is correct.

Senator **Specter**. Now, do not answer this if you choose not to, but have you molested children on occasions other than the one which led to your conviction?

Mr. **Doe**. Yes, sir.

Senator **Specter**. And when did that occur?

Mr. **Doe**. This has been an ongoing problem from the time I was a late teenager. It has been nothing that is recent. It has gone on for the past 25 years.

Senator **Specter**. And how old are you at the present time?

Mr. **Doe**. Forty-five.

Senator **Specter**. Had you actively sought jobs which placed you in contact with children?

Mr. **Doe**. Yes; that was part of the working conditions of the job I was trained for in college.

Senator **Specter**. But did you look for such jobs where you would have access to children for the purpose of molesting them?

Mr. **Doe**. No; that was not the reasoning for my taking the job.

Senator **Specter**. What kind of jobs had you held which put you in contact with children?

Mr. **Doe**. Working as a choir master in a church, serving as organist and choir master.

Senator **Specter**. Did those jobs as choir master lead you into contact with children whom you molested?

Mr. **Doe**. It led me into contact. That was not the reason for taking those jobs.

Senator **Specter**. How many children have you molested?

Mr. **Doe**. A good many.

Senator **Specter**. How many?

Mr. **Doe**. I would have no count.

Senator **Specter**. And what does the molestation consist of, Mr. Doe? Remember you are free to not answer any question you choose not to.

Mr. **Doe**. Generally it involves fondling.

Senator **Specter**. Anything beyond that?

Mr. **Doe**. It has in the past, yes.

Senator **Specter**. Such as?

Mr. **Doe**. Such as oral.

Senator **Specter**. Do you molest girls as well as boys?

Mr. **Doe**. No.

Senator **Specter**. How do you account for not molesting girls?

Mr. **Doe**. I really could not tell you.

Senator **Specter**. And what ages are the children whom you molest?

Mr. **Doe**. Anywhere from, I would say, 9 to 16, approximately.

Senator **Specter**. Have any of the children complained except for the one which led to your conviction?

Mr. **Doe**. There have been people that have complained before, yes.

Senator **Specter**. What happened on those occasions?

Mr. **Doe**. Generally it was a thing that was dismissed.

Senator **Specter**. Somebody was not believed, the child was not believed?

Mr. **Doe**. Not really that, but it was a case where they did not want the child to have to testify.

Senator **Specter**. So, you avoided the prosecution because the child did not want to testify. How many times did that happen?

Mr. **Doe**. It was simply luck. That happened approximately 5, 6 years ago.

Senator **Specter**. Just once?

Mr. **Doe**. Yes.

Senator **Specter**. Looking at it from the point of view of a parent, what kind of advice, since you are a parent yourself, what kind of advice would you give to a parent, say, to alert a child of tender years about the problems of being molested?

Mr. **Doe**. I think what is being proposed now, and many things that have been mentioned today, I think, all is very favorable.

Senator **Specter**. Well, what would you suggest? Did you ever advise your own children about the problems of being molested?

Mr. **Doe**. I certainly have recently.

Senator **Specter**. Well, they are 22, 20, and 14 now. Did you ever before?

Mr. **Doe**. The older ones, of course, we have discussed this whole problem. We have tried to be completely open.

Senator **Specter**. You never molested your own children?

Mr. **Doe**. No, I have not, thank God.

Senator **Specter**. Well, what would you suggest to a parent by way of what age to advise a child about the problems of a child molester, 5, 4?

Mr. **Doe**. From what we see, from people that I have talked to in the program, it goes on even younger than that.

Senator **Specter**. How young?

Mr. **Doe**. I have seen people who are attracted to babies, 6 months.

Senator **Specter**. Child molesters attracted to 6-month-old infants?

Mr. **Doe**. Believe it or not. How do you advise a 6-month-old?

Senator **Specter**. Do you believe that there ought to be laws which require that a records check be made of people who juveniles are in custody of, or who are in charge of day care centers, or who have contacts with juveniles in day care centers?

Mr. **Doe**. I think it is very important that they check the records. Most sex offenders have not been convicted as criminals. I have no statistics to support that statement, but I believe it to be true. Most sex offenders have not been convicted as criminals. It would be far better if one could check adequately their background as thoroughly as possible.

How do you enact the law? I do not know. That is perhaps your department. But far more thorough investigation than has gone on in the past. When I have been hired—I do not want to incriminate any employers—but there was just perhaps the last person on my dossier called, far from adequate. If they would have checked properly, they could have seen that I had molested people.

Senator **Specter**. How would they have made that determination, Mr. Doe?

Mr. **Doe**. Former employers.

Senator **Specter**. And former employers knew that complaints had been made about you as a child molester?

Mr. **Doe**. Right. Before this last position, I was never convicted.

Senator **Specter**. But complaints had been made?

Mr. **Doe**. Complaints had been made.

Senator **Grassley**. Mr. Chairman, may I ask a followup question on that point?

Senator **Specter**. All right.

Senator **Grassley**. I am Senator Grassley from Iowa.

If there had been such a check, if those complaints had been filed with law enforcement and they had been on record, would knowledge of a background check deterred you from seeking jobs?

Mr. **Doe**. It would have made it a lot more difficult, of course. It would have made it a lot more difficult.

Senator **Grassley**. It would have caused you to think about going to work in areas where you had easy access to young people if you knew those employers had the ability to check to see if you had had any complaints filed against you or any arrests?

Mr. **Doe**. It would have made it much more difficult. My problem does not happen when I am teaching. I am not thinking of molesting at all. It is totally on the job.

After the class would be over or if there would be individual private lessons and a child would get very close at all, in that particular case I cannot work. At present, I am confident that I will not reoffend. On the other hand, I can never again put myself into a situation where I will be alone with a child.

If I am in a class, if there is a parent present, there is not a problem. But alone with a child, I think I will be OK, but thinking is not good enough.

Senator **Specter**. Still, how widespread is child molestation, in your opinion?

Mr. **Doe**. I think far wider than the average person would ever know.

Senator **Specter**. Having had some experience with it, as you have testified, how widespread is this problem?

Mr. **Doe**. You see all types of numbers. I would have no way of putting percentages or numbers.

Senator **Specter**. But in your therapy you have come into contact with many other child molesters?

Mr. **Doe**. Yes, yes. But what do you mean? What percentage of the male population?

Senator **Specter**. What percentage of children have been molested?

Mr. **Doe**. I do not know. You see so many different numbers. I would have no idea. I do not know. I just know that there is a lot more going on, and now due to education, there is more being reported, as I think the district attorney had stated before. I do not think it is a thing today that there is any more going on today. I think we are just hearing more about it. It has been an ongoing problem for a long time.

Senator **Specter**. What do you think about a book that I have already described today, "How to Have Sex with Children"? Do you think that that is a book which triggers sexual molestation of children?

Mr. **Doe**. It certainly would not help the situation, would it?

Senator **Specter**. Well, I would not think that it would help it. I would think that it would encourage molesters if they had a book which tells you how to have contacts with children, how you make friends, how you entice them, how you have a sexual relationship. A book like that certainly has the capacity to put the idea into the mind of someone who does not have it or perhaps the idea into the mind of someone who is thinking about it or would be predisposed. This book certainly is an encouraging factor.

Mr. **Doe**. Yes, I would agree with you.

Senator **Specter**. What effect does pornography have on child molestation, in your opinion?

Mr. **Doe**. I think it depends upon the person. One person can look at pornography and use it as a relief. Perhaps the other type person would look at pornography and have it trigger his action.

Senator **Specter**. Do you know of anybody who has been triggered to molest a child by looking at pornography?

Mr. **Doe**. I have not.

Senator **Specter**. You have not, but do you know of anybody who has?

Mr. **Doe**. I could not say directly, no.

Senator **Specter**. Dr. Berlin, do you have an opinion as to the effect of pornography on child molestation?

Dr. **Berlin**. First of all, in the creation of that pornography, children are used. So that absolutely has to be stopped, but as far as the question of whether or not this is causal with respect to men who are attracted sexually to children, I would suspect I could show you all of the pictures in the world or have you read all the books in the world about having sex with little children and you would not become interested in having sex with little children.

Senator **Specter**. But are there some men who would be, who would look at pornography, a man in a sexual pose with a child. Does "How to Have Sex with Children," in your professional judgment, stimulate some potential pedophiles to sexually molest children?

Dr. **Berlin**. First of all, I would make the point that pornography is different. The Playboy picture is not pornography for the homosexual pedophile. I think I would agree with the answer this individual has given. I do believe it whets the appetite for some and that that needs to be stopped. I think for others it does not make any difference, and there are some who do use it as a release. They use it in masterbation. That may make it easier for them, but certainly to the extent that kids are being misused in the production of it, that in and of itself should be enough reason to want to stop it.

Senator **Specter**. Well, before turning to Senator Hawkins, I would only make one concluding statement, and that is that anybody who is a victim of child molestation ought to report it. The circumstances that you testify, Mr. Doe, where you molested children and they did not come forward with the complaint or their parents did not come forward with the complaint is really abhorrent. As tough as it is when you are a victim, there is a real duty on the part of victims in our society to report crimes and stand by prosecutions and see to it that those who are guilty are prosecuted and convicted for whatever the law proceeds on, tough as it is, because those victims who do not do so are just inviting more victims.

Senator Hawkins.

Senator **Hawkins**. Doctor, doesn't most sentencing include treatment, as we have heard this witness say?

Dr. **Berlin**. I do not think there is much available in the way of treatment. I think lipservice is often given. In Maryland we refer to the Department of Correction, but I am in there now because I have been interested in this problem. Basically we are warehousing individuals. Many of them that are in our treatment program have been in and out of prison, and they have not had adequate treatment.

They may have talked to a psychologist on a couple of occasions, but there has been no concerted effort to see to it that these men come out any differently than the way they went in.

Senator **Hawkins**. What is the percentage of men who come to you for treatment before they are arrested?

Dr. **Berlin**. Originally it was very small. It was almost all people who were referred through the courts, not by the way by defense attorneys; sometimes by judges and as part of pre-sentencing investigations. Now we are grateful that about 15 percent of our people, since there has been more attention, have come to us, and I can tell you quite candidly that we are involved in helping some people to change where the law would not have been involved because the law had not known what was happening.

Senator **Hawkins**. What percent are permanently cured by your treatment?

Dr. **Berlin**. I do not think that we can talk about cure. We are talking about the nature of someone's sexual orientation, but I do think we can talk about control. I think it is similar to alcoholism. I do not think we have a cure for alcoholism, but we have helped many good people who have had these problems maintain a constant vigilence and keep themselves from slipping back into the difficulties that their alcoholism creates. I think we are able to do the same thing with this sort of temptation, as well.

So I think there is control that can be very effective, but I would not use the word "cure".

Senator **Hawkins**. Because we have heard testimony today that ricidivism is very high.

Dr. **Berlin**. Well, we have heard about ricidivism in the absence of treatment or when nothing has been done except simple incarceration. We are following very carefully all of the men that we are involved with in treatment. We have approximately 150 men who are in treatment in the community. I can assure you that if we were not doing well, the community would not be tolerating what we are doing. It is only because the overwhelming majority of those men are not continuing to create problems that programs such as this can exist.

Senator **HAWKINS**. How long do they have to stay in your program?

Dr. **BERLIN**. Well, some of them may stay in indefinitely.

Senator **HAWKINS**. It would be like AA?

Dr. **BERLIN**. We look at it as the way you might look at your family physician, that there may be periods when you need to go very intensively, but you are going to be on the books indefinitely, and even when things are going well, perhaps a couple of times a year, you had better come in for checkups, and if there are problems, one ought to come much more frequently.

Senator **HAWKINS**. Well, you brought with you a patient who was arrested and has been under treatment for 3½ months, who is taking Depro-provera, who feels he is cured, but says in the future he would never ever want to be alone with a child. Would that mean he continually has to take Depro-provera?

Dr. **BERLIN**. I am not sure if he has to take Depro-provera. Again, I want to emphasize it is not a cure, and we are helping people help themselves. We have to make a judgment about that, and there are no guarantees, but I do think we have been trying in good conscience to make sound judgments.

Now, will he have to maintain a vigilence indefinitely? I think yes. Should he maintain contact with a program such as ours indefinitely? I would say yes. I think that some of that ought to be mandated. I think the stakes here are high, and we should not just leave people to decide for themselves. I think that long periods of probation requiring careful monitoring with imposition of restrictions and with consequences if they are violated, all of that I think is useful.

Whether he should take Depro-provera indefinitely, I do not believe that we should impose this upon people. He has indicated to us that he finds it helpful to take the medicine in order to make it easier for him to resist these temptations. I would make it available to him indefinitely if he feels that he needs it, but I do not think we ought to at this point in time, at least, be imposing it upon him. I do believe that he is being candid with us regarding what he is feeling and how he is conducting himself. I cannot prove it, but that is my judgment.

Senator **HAWKINS**. So what is a long sentence? We were talking about 18 months with Mr. Doe.

Dr. **BERLIN**. Well, 18 months was, I think, in the last case. I am not sure, but I think there can be sustained periods of probation. I think if we understand that putting a person on probation for 2 or 3 years is not to recognize that the problem is chronic in its nature is not adequate, it might be that we could have longer periods of probation, perhaps 10 years, with conditions of monitoring, of being aware where somebody is working as a condition of probation, of being aware of whether or not they are in or out of treatment. I think much more could be done along those lines.

Senator **HAWKINS**. Is your program available in all 50 States?

Dr. **Berlin**. We have referrals from close to 50 States, which indicates the lack of programs in many areas. There are others that are beginning to develop such programs. I know there has been legislation at the State level now in a number of States, attempting to address this issue by getting at the cause, which are the men who are doing this in the first place.

But there is a tremendous lack of programs, and I think it is because of what I indicated earlier, and I appreciate the sentiments. The sort of reflex feeling is: "My God, we're spending too much on these guys. We need to spend it on the kids." But I think it should not be an either/or proposition. I think we have to do both, and I think there has been a terrible lack of support for programs to learn more about this in terms of what causes men to become this way, and to learn more about how we can help such individuals change.

Senator **Hawkins**. But when you look at the case history of a pedophiles, they always plead guilty and ask for treatment because they know that they are going to be right back out.

Dr. **Berlin**. Well, you are interpreting their motives. I agree with the first part of it. Certainly no one wants to go to prison. So if you want me to feel surprised that somebody is trying to do their best to stay out of prison, that is no surprise at all. But that does not mean that the only reason that a person is interested in help is to avoid going to prison.

People have a tremendous capacity to rationalize. I am a physician. I see women who come in with a lump in their breast far beyond the time when they should have come in. People tell themselves: "I am going to be able to control it. This is going to be the last time," and in areas such as this it is tremendously difficult to step forward and to indicate that one has this problem and needs help.

So I am not condoning the procrastination, but it is not unique to these groups of individuals, and I think one simply has to ask oneself, what is it that would cause a grown, mature adult to risk years of incarceration, public humiliation, financial ruin to go around having sex with little children? Something is wrong.

Senator **Hawkins**. Haven't we been asking that for 50 years?

Dr. **Berlin**. I think we have been asking it, but I do not think we have looked at the people who present the problem. Most of the literature on this is from the perspective of victims, from the perspective of people who have political ideologies about this. I am unaware, and I am in this area, of a concerted effort to study these individuals as human beings to try to get some sense of the complexity of them and to get some sense of what it is that pushes them to do what they have done. No, I do not think we have been doing that for 50 years.

Senator **Hawkins**. Would you advocate a number to call for people who feel that they are molesters and they need help rather than waiting for them to be arrested?

Dr. **Berlin**. People certainly can call Hopkins, and I think people around our area are aware of that, and some have been doing it.

Senator **Hawkins**. How many States do you have patients from?

Dr. **Berlin**. I have not counted them, but it is certainly over half of the States. People will be referred as in patients to our hospital for evaluation, for recommendations, and then we will work in liaison with treating individuals in other States. I am certain that at least 25 of the 50 States, and probably a number more than that.

Senator **Hawkins**. But you would say it is probably a very small percentage that had the advantage of your program of those who have been arrested and convicted?

Dr. **Berlin**. It is a very small percentage that have access to any form of treatment. We have been talking about the magnitude of this problem. I do not know the numbers, but it is very big, and a tiny fraction of people, either in or out of prison, have access to this form of treatment, and I agree that it is appalling, the lack of response we have had to the kids, but it is equally appalling, the lack of commitment we have had to deal with the cause of the problem for these kids, which is to learn more about this and how to try to change it.

Senator **Hawkins**. Is that the lawmakers' responsibility? Is that the legal profession's responsibility or is that the physician's responsibility?

Dr. **Berlin**. It is the responsibility of concerned human beings, all of us. You know, we are not on opposite sides here. It is difficult for me as a physician. I come in and sometimes people seem to get the sense that he is the guy who treats the offenders and he is not with the victims. I mean, God forbid some innocent child should suffer because of a bad judgment I make. We are all on the same side, and somehow that idea has to get through, and it is the responsibility of every single one of us, physicians, parents, and any decent human being.

Senator **Hawkins**. Are you in favor of the fingerprint check and the criminal records check that we are discussing here today?

Dr. **Berlin**. I am not so naive as to think that it can be solved only through good will. I do think it is important to have programs available. I do think there are people who will come forward and gain access to them, but we still have to have laws to make certain that those who would be irresponsible and not avail themselves of treatment either get into that treatment because they are going to have to or else, in that case, I would think we have to remove them from society because they are not being responsible in dealing with a problem that affects other people.

So I think there is a very important need for legislation, and I think it is in all three areas I mentioned with respect to how we educate and counsel children, with respect to organizations such as day care centers where children would be particularly vulnerable, and with respect to efforts to try and understand what motivates these men and to help them and to make available to them the opportunity to change, if indeed they want that opportunity.

Senator **Hawkins**. And you feel that should be Federal rather than State so that you do not slip from State to State?

Dr. **Berlin**. You know, this is not my area of expertise. I do not know the best way to resolve it. I suppose it needs to be concern at all levels, and that you at the Federal level need to ask what you can do. Those at the State and local levels need to ask what they can do, and you would know more than I.

Senator **Specter**. Should a kid from California have more protection than a kid from Florida?

Dr. Berlin. I think that there needs to be protection. How to implement that, whether that is through Federal or local legislation or through both, I would think the answer is both.

Where I do see a clear need for something at the Federal level that relates to something we were talking about earlier, where people can leave one area and go to another, I think there should be a sharing of records with respect to people who might pose problems in the lives of children. They should not be able to leave Arizona and go to New Mexico, and Arizona be unaware of the fact that you have had problems in New Mexico. So I think the role of the Federal Government can be in requiring and mandating the sharing of information between States, but again, carefully, because there are issues here of not wanting to abuse that power. We do live in a country where we value very much the freedoms we have, and it is a matter of balancing.

Senator **Hawkins.** Thank you.

Senator **Specter.** Senator Grassley.

Senator **Grassley.** Mr. Chairman, I am not going to ask any questions, but I think this last discussion just highlighted the reason I put my bill in, and I did put my bill in before there was so much in the weekly magazines about this problem. It has come from a lot of things that have happened in my State recently. You have had people before your committee from my State. I have been working with people in my State.

I know the Department of Justice feels that this should be left to the States. I think we have had ample testimony today of the necessity for having this handled at the Federal level. We have had Mr. Doe respond to a question that I asked in regard to whether or not he felt that a prospective search of complaints about individuals might deter persons from seeking jobs where children might be. I think we have got the mechanical capability of doing this through the information network of law enforcement, and I think we ought to use it.

I know there is no one perfect piece of legislation. Just discussions that I have had about my legislation would lead me to believe that Justice has several sensible suggestions for me to change my legislation that we are going to look at and work with, but I think we have got to accept the fact that if we are going to deal with this at all, it has got to be done through Federal legislation.

In closing, I would just like to have a statement inserted in the record and apologize for not being here before.

Senator **Specter.** Without objection, your statement will be made a part of the record, and the statement from Senator Mathias will also be made part of the record without objection.

[The prepared statements of Senators Grassley and Mathias follow:]

Prepared Statement of Hon. Charles E. Grassley, a U.S. Senator From the State of Iowa

Mr. Chairman, under your leadership, we are looking at some very difficult issues in this subcommittee. I believe that we can acknowledge some accomplishments that have surfaced from these hearings. Aside from a heightened public awareness that these hearings bring about, we have witnessed legislative achievements in the areas of child abuse, missing children, and child pornography.

The question of exchanging criminal history records with businesses and organizations whose work will bring them in contact with children was discussed in a report issued by the President's Task Force on Victims of Crime issued in December of 1980. Issuance of this report and in fact my introduction of this bill, S. 1924, preceded the recent sex-abuse scandals at centers from California to New York that have terrified parents of young children. This bill addresses the concern that child molesters, through volunteer work or employment with educational institutions or child service organizations, might use their positions as a potential hunting ground for children. This bill seeks to assist such organizations by providing material for criminal background checks for employment screening purposes.

Since the last hearing on these bills that was held in the late spring, I have had discussions in Iowa and in town on how to best implement a screening process for prospective employees. The FBI has some very useful suggestions which I plan to incorporate into this bill. Nevertheless the Department is opposed to the bill stating that it is a State responsibility to promulgate laws governing the exchange of such information.

While the FBI may be citing the most desirable approach, it is still the most remote approach. Currently only six States have laws which permit national record checks on school teachers, three States for day care employees, and four States for school bus drivers. Aside from the fact that few States have instituted background checks, let me state the obvious: child molesters and pedophiles do not necessarily stay in one place—they travel if need be. One State may have a State record pertaining to an individual's criminal conduct, but if that information is not shared and exchanged with every other State or as in the case of this legislation—with a centralized computer bank—then that individual is free to relocate to States that do not have checks.

In all of the discussions that we have had on this bill let us not forget that the vast majority of child molestation and abuse occurs in the home. This fact is scant comfort to millions of day care parents, parents whose children are at camp or in school. I believe that we need to offer some assurances to the parents of this country.

All of us in Congress have been following the day care child abuse nightmares that have gripped the media and the public with a growing sense of helplessness and fear. This legislation is the response that Congress has initiated at least for the immediate present. There is still much sorting to be accomplished. But we want to at least encourage our States to attempt to fashion some concrete standards and we want to give them the benefit of what we have distilled from the dozens of hearings that have been held in both chambers.

PREPARED STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

This morning's hearing of the Subcommittee on Juvenile Justice focuses on the problem of sexual abuse of children in day care centers. In recent months, this problem has leaped from the shadows onto the front pages. The nation has been horrified by recent revelations of widespread sexual abuse of very young children in both private and publicly-financed child care centers. Our shock deepens when we reflect on the desperate and growing national need for high quality child care, and on the deplorable inadequacy of our response as a society to this challenge.

The problem we examine today is already serious, but it is bound to become much more serious if it is not met by bold, constructive, and prompt action. With today's hearing, our subcommittee becomes part of that response, thanks in great part to the initiative and energy of our chairman, Senator Arlen Specter.

Before we can respond effectively to the crisis in day care, we must know something of its dimensions. Today, nearly three-fifths of all mothers with children under age six are employed outside the home. By the end of the decade, one-fourth of all children under age 10 will live in single-parent households. The millions of children of those working mothers and single parents ought to have some place to go that is safe, nurturing, and conducive to healthy development. But at the very least, they are entitled to be some place where they are protected from adults who prey upon the young. If we are unable to provide at least that minimum level of safety, we cannot claim to care about America's children—or about America's future.

While no one would disagree with this goal, there remain some difficult questions about how the federal government can best help to achieve it. For example, the two bills that are before the subcommittee would make it easier for the directors of child care centers and similar facilities to check on the arrest and conviction records of employees and applicants for employment. I am sure that would help to weed out at least a few people who ought to be prevented from working with children. But I am familiar enough with the shortcomings of our national criminal history records systems to know that the benefits of increased access to this information might be very limited, while the costs of dissemination of incorrect or incomplete information might be uncomfortably high.

I hope that the testimony we hear today will shed more light on the strengths and shortcomings of the approach that these bills take. If their enactment prevents the abuse of even a few children in day care centers, they deserve our sympathetic consideration. But regardless of their merits, we all must know that standing alone, they will provide little, if any, help to the millions of American children who are at risk because of substandard child care.

It will take a concerted effort of all sectors of our society if today's shocking headlines from California, New York, Pennsylvania and elsewhere are not to become tomorrow's "dog-bites-man" story—regrettable but commonplace. State and local government will have to promulgate strong licensing standards for child care facilities and staff—and will have to enforce them vigorously. More employers in the private sector will have to recognize, as we have here in the U.S. Senate, that quality worksite child care is essential to employee morale and welfare. Parents will have to participate more actively in the affairs of child care centers, for many experts tell us that energetic parent involvement is one of the most essential factors in the prevention of abuse. And all of us will have to understand that, as a nation, we must commit more resources to improving the status and the compensation of child care workers—the women and men to whom we entrust our children each working day.

I know that each member of this subcommittee shares with me a commitment to contribute in fashioning an appropriate federal response to the shocking problem of abuse of children in child care centers. Today's hearing marks an important step in that complex process. The stakes of our common endeavor could not be higher. The youngest Americans—children under the age of ten—make up only about one-sixth of our population; but they are all of our future.

Senator **Specter**. Thank you, Senator Grassley. I think you are correct that we do need some Federal legislation. As I have said earlier, this problem came to my attention in 1981 and 1982, when we investigated some situations in Oklahoma, which led me to introduce Senate bill 521, but I do think that these hearings underscore the need for that kind of action, and we shall proceed to work on it.

Thank you very much, Dr. Berlin, for your very cogent testimony, and thank you, Mr. William Doe, for stepping forward in what is obviously a very difficult situation. Thank you.

I would like to call our final panel, Ms. Nancy Brown, Director of the Senate Employees Child Care Center, and Dr. Bettye Caldwell, president of the National Association for the Education of Young Children, Little Rock, AR.

We will ask Dr. Caldwell to go first because she has a plane to catch.

STATEMENTS OF A PANEL CONSISTING OF NANCY H. BROWN, DIRECTOR, SENATE EMPLOYEES CHILD CARE CENTER, AND DR. BETTYE CALDWELL, PRESIDENT, NATIONAL ASSOCIATION FOR THE EDUCATION OF YOUNG CHILDREN

Dr. **Caldwell**. Thank you.

As I have listened to the other speakers, I have found myself wanting to introduce all of you to another picture of the world of child care than the one that has been presented here this morning. I hope you will give me enough time to try and do that briefly.

Incidentally, I have been invited because I am president of the National Association for the Education of Young Children, and that is not the organization that Senator D'Amato kept referring to a number of times. We have 43,000 members who range from aides in child care programs to professors and directors. It is a very heterogenous group, all of whom are concerned about the welfare of young children.

I have worked in this field for 20 years now, and have conducted research to determine the effects of this kind of experience on children. I have watched the field grow. I have grown with it, and I have felt many of its growing pains.

When I first read about Manhattan Beach, you can imagine my own personal pain, not only as a mother, as somebody who has helped develop day care, as somebody who is currently president of this national association. I felt it personally, as well as professionally.

But I think that the group here—and the presentations have been very emotionally moving to me—has heard about a side of the child care field that is there. I did not know it until these stories began to break, but there is another side out there that I want you to know about, and I feel that it is very important to get it into the record.

I have a written statement that I will give to you.

Senator **Specter**. It will be made a part of the record as well.

Dr. **Caldwell**. I want first of all to say to everyone here that no one is more concerned about protecting children in child care than the people who have struggled for years to upgrade quality in this field.

I wanted occasionally to weep as I have heard people say, as the District Attorney from the Bronx did, "Why, you can get a job in that center if you have just got an eighth grade education." I have been preaching for 20 years that that should not be allowed, and yet people do not seem to realize that importance of training in this field.

This field has been victimized by an attitude on the part of people in high positions, people who appropriate the money, people who write the State and the Federal regulations. This attitude says, "Anybody can do that work. Why, they are just taking care of little children."

They are "just taking care"—what an insulting term—and they do not say, of "our most precious resource." They are preventing their intelligence from declining if they are deprived children. They are trying to make sure that their emotional development goes on as it ought to if they are children from middle class families whose parents have divorced, if the mother has been home before and suddenly has to go to work.

People in those child care centers have been maligned, and I do not mean that there has been anything deliberate. They are the ones who are out there picking up a lot of the pieces in this whole country. That is what I want the committee to realize, and I want the people who are concerned about these instances to realize.

Incidentally, I am not concerned about protecting anybody's job, including my own, in this field. But I am concerned about protecting the reputation for integrity and for concern for children of a profession that is currently being severely misunderstood.

The reported instances of sexual abuse in child care centers must be examined in the overall context of how our society cares about its children and its families. Ultimately the success of any solution to this problem that we have talked about today is going to hinge on the next generation, and as Mr. Doe just said very poignantly, it is going to hinge on our ability to raise children who grow up to become adults without the problems that cause them to need to do these things to children.

The child care field is a vital part of rearing children in this country, whether we want it to be that or not, because we have 20 percent of our families across the socioeconomic spectrum now have only one parent. The alternative to not working and using child care if you have young children is going on welfare, something that nobody wants.

In many other situations, we have families where somebody is ill, where for temporary reasons there is a medical problem so that care cannot be provided. We have to have a child care system in this country, and surely we can provide one as readily as other countries throughout the world do.

What a lot of people do not realize is the collective set of burdens under which the child care field has developed, and I am going to refer to those just a minute. The first thing I think everybody should know is that about half of the people who work in child care programs, those put down earlier as having an eighth grade education or not much more, make minimum wage. In my State of Arkansas, in the State personnel roster, child care workers are lower than custodians.

In general, child care workers make less money when they first come into the field than the people who sweep floors in the buildings, and the buildings are frequently not swept all that well because many of the programs do not clear enough money to pay for good custodial service.

The certified teachers in the program make 60 to 70 percent, at best, of what teachers in public schools make. The directors are similarly underpaid. Sometimes we make the people who are in child care as a business sound like they are just there to make a quick buck. You do not make a lot of money out of child care in any situation, but I think that there is nothing wrong with having it as a legitimate business operation for America.

We support business in many aspects, in many manifestations in this country. Child care, as a small business operation, deserves that same kind of support.

One of the other things that should be said is that the incidences that we have heard about today and in the testimony yesterday are, very, very small in terms of the magnitude of the population using child care centers.

Senator **Specter**. How much child molestation is there that is unreported, Dr. Caldwell?

Dr. **Caldwell**. I have no way of knowing that.

Senator **Specter**. Is it a serious problem? Is it a serious national problem?

Dr. **Caldwell**. Oh, it is a serious national problem if there is one case, and the woman from California said she is dealing with 400 cases and suspects that there are many more out there. So any of those are absolutely tragic, but it is not an epidemic, and I think it is important to have that said.

Senator **Specter**. Why do you say that?

Dr. **Caldwell**. Because it is not an epidemic. These are isolated instances, and, as you and Senator Hawkins commented earlier, they seem to be occurring more in certain settings—California, New York, and a few other locales—and there does tend to be a sort of mass communication with this kind of thing.

Senator **Specter**. Well, I am interested in your professional judgment that it is not an epidemic. They are isolated cases because that is part of what the subcommittee is concerned about. We know about the cases that are reported, and we cannot be sure that all of those which are reported are accurate. That is a determination which has to be made.

But then we do not know about the ones which are not reported. We know that some are not reported because Mr. Doe testified that he did molest children and that there was no report about them, but I am interested in why you think it is not an epidemic, which is the word you say it is not.

How widespread a problem is it?

Dr. **Caldwell**. Well, every case we have had reported we know about now, but what the actual incidence of those would be, there are something like 20 million children in child care in this country. That is a lot of children, and we are dealing perhaps with 400-plus that have been reported from California.

Senator **Specter**. Well, how many have been reported?

Dr. **Caldwell**. 500, 600 perhaps, and you know, that is 600 personal tragedies. Do not misunderstand what I am saying, but it is true to say it is not an epidemic. The bulk of the child care out there is being operated by people who love children, who like to be with them, who are doing good jobs under extremely adverse circumstances.

Senator **Specter**. Dr. Caldwell, I know you have some ideas as to what might be done, and our time is drawing short.

Dr. **Caldwell**. OK. Please let me say one or two other things. Something that has needed saying for 2 days.

When you listen to the testimony of the various people and you look at the TV coverage of these episodes, you get the idea that most child care workers are men. There are very few child care workers throughout America who are men. I do not have a percentage figure for you, but I would say it is clearly less than 5 percent, probably lower than that.

Yet we have been talking as though almost every program has large numbers of men in it. I think, incidentally, it is unfortunate that this is going to drive men from the field because these children need some men who care about children. All children need that, but the men in child care are most typically the directors and the managers. They are not the ones who are in there working with the children. Men traditionally do not like to change diapers and do some of the things that have to be done in these programs. So the very fact that there are relatively few men is a most important thing to get into the record.

Now, as to what we need to do. There are at least two things that I want to mention. The legal remedies that you are talking about I deeply appreciate. They are extremely important, but they are not enough.

We have got to create the conditions which can produce changes in the minds and hearts of people as various people who have spoken here this morning have said, most poignantly perhaps Mr. Doe. We have to create conditions of child rearing so that people do not grow up with these problems.

Now, let me tell you about a program that the National Association for the Education of Young Children, the group that I am president of, launched 3 years ago. This was long before anybody heard of Manhattan Beach, CA. We are calling it the Center Accreditation Project or the National Academy of Early Childhood Programs. I think this will have longer lasting benefits in removing sexual abuse as a hazard in day care than the short-term remedies which we are talking about here, and which we need. We need both kinds.

But this will be an accreditation program. We have never had such a program in the child care field. Parents are involved in it. They will have to fill out forms on the centers that their children attend. If the center turns in a description that describes the way the children are handled, the parents have to confirm: "Yes, this is what I have seen."

No center that has closed visitation policies could be accredited within this system, and again I remind you that this plan was formulated 3 years ago.

Another very important guideline is that to be accredited every program will have to define a probationary period when hiring new staff and will also have to provide continued training and development for the people in it.

Senator **Specter**. Dr. Caldwell, when you talk about an accreditation program, are you saying that would be put into effect and people can deal with the program which is accredited or not?

Dr. **Caldwell**. In the long term, yes.

Senator **Specter**. But what do you think about the requirements that there be a criminal record check on people who are employed by a day care center?

Dr. **Caldwell**. I had not thought a great deal about that until I came to this testimony, and I have read the bill. I personally have no objection to it.

McFarlone, the therapist from California, said yesterday that relatively few pedophiles are ever convicted. This was repeated in today's testimony. There are many that have been accused but relatively few who have been convicted. So, if records of convictions only are checked, I am not sure how helpful this will be.

Senator **Specter**. Well, a record of arrest would be relevant, too. A record of arrest may be used for a good many purposes under our laws.

Dr. **Caldwell**. We talked about this yesterday at the national association office and felt that to demand a probationary period for workers and insisting on checking references, which was another thing Mr. Doe mentioned this morning, would be more valuable. We then added that to our accreditation criteria.

I have a set of those criteria to leave for you.

Senator **Specter**. Thank you very much. We will make it a part of the record.

[The following was received for the record:]

naeyc

National Association for the Education of Young Children   1834 Connecticut Avenue, N.W., Washington, D.C. 20009   (202) 232-8777   800-424-2460

Criteria For High Quality Early Childhood Programs

A. Interactions Among Staff and Children

Goal: Interactions between children and staff provide opportunities for children to develop an understanding of self and others and are characterized by warmth, personal respect, individuality, positive support, and responsiveness. Staff facilitate interactions among children to provide opportunities for development of social skills and intellectual growth.

A- 1. Staff interact frequently with children. Staff express respect for and affection toward children by smiling, touching, holding, and speaking to children at their eye level throughout the day, particularly on arrival and departure, and when diapering or feeding very young children.

A- 2. Staff are available and responsive to children, encouraging them to share experiences, ideas, and feelings, and listening to them with attention and respect.

A- 3. Staff speak with children in a friendly, positive courteous manner. Staff converse frequently with children, asking open-ended questions and speaking individually to children (as opposed to the whole group) most of the time.

A- 4. Staff treat children of all races, religions and cultures equally with respect and consideration. Staff provide children of both sexes with equal opportunities to take part in all activities.

A- 5. Staff encourage developmentally appropriate independence in children. Staff foster independence in routine activities — picking up toys, wiping spills, personal grooming (toileting, washing hands), obtaining and caring for materials, and other self-help skills.

A- 6. Staff use positive techniques of guidance, including redirection, anticipation of and elimination of potential problems, positive reinforcement, and encouragement rather than competition, comparison, or criticism. Staff abstain from corporal punishment or other humiliating or frightening discipline techniques. Consistent, clear rules are explained to children and understood by adults.

A- 7. The sound of the environment is primarily marked by pleasant conversation, spontaneous laughter, and exclamations of excitement rather than harsh, stressful noise or enforced quiet.

A- 8. Staff assist children to be comfortable, relaxed, happy, and involved in play and other activities.

A- 9. Staff foster cooperation and other prosocial behaviors among children.

A-10. Staff expectations of children's social behavior are developmentally appropriate.

A-11. Children are encouraged to verbalize feelings and ideas.

B. Curriculum.

Goal: The curriculum encourages children to be actively involved in the learning process, to experience a variety of developmentally appropriate activities and materials, and to pursue their own interests in the context of life in the community and the world.

B- 1. The curriculum is planned to reflect the program's philosophy and goals for children.

B- 2. Staff plan realistic curriculum goals for children based on assessment of individual needs and interests.

B- 3. Modifications are made in the environment when necessary for children with special needs. Staff make appropriate professional referrals where necessary.

B- 4. The daily schedule is planned to provide a balance of activities on the following dimensions:

a. Indoor/outdoor
b. Quiet/active
c. Individual/small group/large group
d. Large muscle/small muscle
e. Child initiated/staff initiated

B- 5. Developmentally appropriate materials and equipment which project heterogeneous racial, sexual, and age attributes are selected and used.

B- 6. Staff members continually provide learning opportunities for infants and toddlers, most often in response to cues emanating from the child. Infants and toddlers are permitted to move about freely, exploring the environment and initiating play activities.

B- 7. Staff provide a variety of developmentally appropriate activities and materials that are selected to emphasize concrete experiential learning and to achieve the following goals:

a. Foster positive self-concept
b. Develop social skills
c. Encourage children to think, reason, question, and experiment
d. Encourage language development
e. Enhance physical development and skills
f. Encourage and demonstrate sound health, safety, and nutritional practices
g. Encourage creative expression and appreciation for the arts, and
h. Respect cultural diversity of staff and children

B- 8. Staff provide materials and time for children to select their own activities during the day. Children may choose from among several activities which the teacher has planned or the children initiate. Staff respect the child's right to choose not to participate at times.

B- 9. Staff conduct smooth and unregimented transitions between activities. Children are not always required to move from one activity to another as a group. Transitions are planned as a vehicle for learning.

B-10. Staff are flexible enough to change planned or routine activities according to the needs or interests of the children or to cope with changes in weather or other situations which affect routines without unduly alarming children.

B-11. Routine tasks are incorporated into the program as a means of furthering children's learning, self-help, and social skills. Routines such as diapering, toileting, eating, dressing, and sleeping are handled in a relaxed, reassuring, and individualized manner based on developmental needs. Staff plan with parents to make toilet training, feeding, and the development of other independent skills a positive experience for children. Provision is made for children who are early risers and for children who do not nap.

C. Staff-Parent Interaction

Goal: Parents are well informed about and welcome as observers and contributors to the program.

C- 1. Information about the program is given to new and prospective families, including written descriptions of the program's philosophy and operating procedures.

C- 2. A process has been developed for orienting children and parents to the center which may include a pre-enrollment visit, parent orientation meeting, or gradual introduction of children to the center.

C- 3. Staff and parents communicate regarding home and center childrearing practices in order to minimize potential conflicts and confusion for children.

C- 4. Parents are welcome visitors in the center at all times (for example, to observe, eat lunch with a child, or volunteer to help in the classroom). Parents and other family members are encouraged to be involved in the program in various ways, taking into consideration working parents and those with little spare time.

C- 5. A verbal and/or written system is established for sharing day-to-day happenings that may affect children. Changes in a child's physical or emotional state are regularly reported.

C- 6. Conferences are held at least once a year and at other times, as needed, to discuss children's progress, accomplishments, and difficulties at home and at the center.

C- 7. Parents are informed about the center's program through regular newsletters, bulletin boards, frequent notes, telephone calls, and other similar measures.

D. Staff Qualifications and Development

Goal: The program is staffed by adults who understand child development and who recognize and provide for children's needs.

D- 1. The program is staffed by individuals who are 18 years of age or older, who have been trained in early childhood education/child development, and who demonstrate the appropriate personal characteristics for working with children as exemplified in the criteria for staff-child interaction and curriculum. Staff working with school-age children have been trained in child development, recreation, or a related field. The amount of training required will vary depending on the level of professional responsibility of the position (see Table 1). In cases where staff members do not meet the specified qualifications, a training plan, both individualized and center-wide, has been developed and is being implemented for those staff members. The training is appropriate to the age group with which the staff member is working (see Table 1).

Table 1
STAFF QUALIFICATIONS

LEVEL OF PROFESSIONAL RESPONSIBILITY	TITLE	TRAINING REQUIREMENTS
Preprofessionals who implement program activities under direct supervision of the professional staff.	Early Childhood Teacher Assistant	High school graduate or equivalent, participation in professional development programs
Professionals who independently implement program activities and who may be responsible for the care and education of a group of children	Early Childhood Associate Teacher	CDA credential or Associate degree in Early Childhood/Child Development
Professionals who are responsible for the care and education of a group of children	Early Childhood Teacher	Baccalaureate degree in Early Childhood/Child Development
Professionals who supervise and train staff, design curriculum and/or administer programs	Early Childhood Specialist	Baccalaureate degree in Early Childhood/Child Development and at least three years of full-time teaching experience with young children and/or a graduate degree in ECE/CD

D- 2. The chief administrative officer of the center has training and/or experience in business administration. If the chief administrative officer is not an early childhood specialist, an early childhood specialist is employed to direct the educational program.

D- 3. New staff are adequately oriented about goals and philosophy of the center, emergency health and safety procedures, special needs of individual children assigned to the staff member's care, guidance and classroom management techniques, and planned daily activities of the center.

D- 4. The center provides regular training opportunities for staff to improve skills in working with children and families and expects staff to participate in staff development. These may include attendance at workshops and seminars, visits to other children's programs, access to resource materials, in-service sessions, or enrollment in college level/technical school courses. Training addresses the following areas: health and safety, child growth and development, planning learning activities, guidance and discipline techniques, linkages with community services, communication and relations with families, and detection of child abuse.

D- 5. Accurate and current records are kept of staff qualifications including transcripts, certificates, or other documentation of continuing in-service education.

E. Administration

Goal: The program is efficiently and effectively administered with attention to the needs and desires of children, parents, and staff.

E- 1. At least annually, the director and staff conduct an assessment to identify strengths and weaknesses of the program and to specify program goals for the year.

E- 2. The center has written policies and procedures for operating, including hours, fees, illness, holidays, and refund information.

E- 3. The center has written personnel policies including job descriptions, compensation, resignation and termination, benefits, and grievance procedures. Hiring practices are nondiscriminatory.

E- 4. Minimum benefits for full-time staff include medical insurance coverage that is provided or arranged, sick leave, annual leave, and Social Security or some other retirement plan.

E- 5. Records are kept on the program and related operations such as attendance, health, confidential personnel files, and board meetings.

E- 6. In cases where the center is governed by a board of directors, the center has written policies defining roles and responsibilities of board members and staff.

E- 7. Fiscal records are kept with evidence of long range budgeting and sound financial planning.

E- 8. Accident protection and liability insurance coverage is maintained for children and adults.

E- 9. The director is familiar with and makes appropriate use of community resources including social services, mental and physical health agencies, and educational programs such as museums, libraries, and neighborhood centers.

E-10. Staff and administration communicate frequently. There is evidence of joint planning and consultation among staff. Regular staff meetings are held for staff to consult on program planning, to plan for individual children, and to discuss program and working conditions. Staff are provided paid planning time.

E-11. Staff members are provided space and time away form children during the day. When staff work directly with children for more than four hours, they are provided breaks of at least 15 minutes in each four hour period.

F. Staffing

Goal: The program is sufficiently staffed to meet the needs of and promote the physical, social, emotional, and cognitive development of children.

F- 1. The number of children in a group is limited to facilitate adult-child interaction and constructive activity among children. Groups of children may be age-determined or multi-age. Maximum group size is determined by the distribution of ages in the group. Optimal group size would be smaller than the maximum. Group size limitations are applied indoors to the group that children are involved in during most of the day. Group size limitations will vary depending on the type of activity, whether it is indoors or outdoors, the inclusion of children with special needs, and other factors. A group is the number of childen assigned to a staff member or team of staff members occupying an individual classroom or well-defined space within a larger room (see Table 2).

Table 2

STAFF-CHILD RATIOS WITHIN GROUP SIZE

	Group size									
Age of Children**	6	8	10	12	14	16	18	20	22	24
Infants (0-12 mos.)	1:3	1:4								
Toddlers (12-24 mos.)	1:3	1:4	1:5	1:4						
Two-year-olds (24-26 mos.)		1:4	1:5	1:6*						
Two and Three-year-olds			1:5	1:6	1:7*					
Three-year-olds			1:5	1:6	1:7	1:8*				
Three and Four-year-olds					1:7	1:8	1:9	1:10*		
Four-year-olds						1:8	1:9	1:10*		
Four and Five-year-olds						1:8	1:9	1:10*		
Five-year-olds						1:8	1:9	1:10		
Six to eight-year-olds (schoolage)								1:10	1:11	1:12

*Smaller group sizes and lower staff-child ratios are optimal. Larger group sizes and higher staff-child ratios are acceptable only in cases where staff are highly qualified (see staff qualifications).

**Multi-age grouping is both permissible and desirable. When no infants are included, the staff-child ratio and group size requirements shall be based on the age of the majority of the children in the group. When infants are included, ratios and group size for infants must be maintained.

F- 2. Sufficient staff with primary responsibility for children are available to provide frequent personal contact, meaningful learning activities, supervision, and to offer immediate care as needed. The ratio of staff to children will vary depending on the age of the children, the type of program activity, the inclusion of children with special needs, the time of day, and other factors. Staffing patterns should provide for adult supervision of children at all times and the availability of an additional adult to assume responsibility if one adult takes a break or must respond to an emergency. Staff/child ratios are maintained in relation to size of group (see Table 2). Staff/child ratios are maintained through provision of substitutes when regular staff members are absent. When volunteers are used to meet the staffchild ratios, they must also meet the appropriate qualifications unless they are parents (or guardians) of the children.

F- 3. Each staff member has primary responsibility for and develops a deeper attachment to an identified group of children. Every attempt is made to have continuity of adults who work with children, particularly infants and toddlers. Infants spend the majority of the time interacting with the same person each day.

G. Physical Environment

Goal: The indoor and outdoor physical environment fosters optimal growth and development through opportunities for exploration and learning.

G- 1. The indoor and outdoor environments are safe, clean, attractive, and spacious. There is a minimum of 35 square feet of usable playroom floor space indoors per child and a minimum of 75 square feet of play space outdoors per child.

G- 2. Activity areas are defined clearly by spatial arrangement. Space is arranged so that children can work individually, together in small groups, or in a large group. Space is arranged to provide clear pathways for children to move from one area to another and to minimize distractions.

G- 3. The space for toddler and preschool children is arranged to facilitate a variety of small group and/or individual activities, including block building, sociodramatic play, art, music, science, math, manipulatives, and quiet book reading. Other activities such as sand/water play and woodworking are also available on occasion. Carpeted areas and ample crawling space are provided for nonwalkers. Sturdy furniture is provided so nonwalkers can pull themselves up or balance themselves while walking. School-age children are provided separate space arranged to facilitate a variety of age-appropriate activities.

G- 4. Age-appropriate materials and equipment of sufficient quantity, variety, and durability are readily accessible to children and arranged on low, open shelves to promote independent use by children.

G- 5. Individual hanging space for children's clothing and space for each child to store personal belongings is provided.

G- 6. Private areas are available indoors and outdoors for children to have solitude.

G- 7. The environment includes soft elements such as rugs, cushions, or rocking chairs.

G- 8. Sound-absorbing materials are used to cut down on excessive noise.

G- 9. The outdoor area provides a variety of surfaces such as hard surface areas for wheel toys, soil, sand, grass, hills, and flat areas. The outdoor area provides shade, open space, digging space, and a variety of equipment for riding, climbing, balancing, and individual play. The outdoor area is protected from access to streets or other dangerous areas.

H. Health and Safety

Goal: The health and safety of children and adults are protected and enhanced.

H- 1. The center is in compliance with the legal requirements for protection of the health and safety of children in group settings. The center is licensed or accredited by the appropriate local/state agencies. If exempt from licensing, the center demonstrates compliance with its own state regulations for child care centers subject to licensing.

H- 2. Each adult is free of physical and psychological conditions that might adversely affect children's health. Staff receive pre-employment physical examinations, tuberculosis tests, and evaluation of any infection. New staff members serve a probationary employment period during which the director or other qualified person can make a professional judgment as to their physical and psychological competence for working with children.

H- 3. A written record is maintained for each child, including the results of a complete health evaluation by an approved health care resource within six months prior to enrollment, record of immunizations, emergency contact information, names of people authorized to call for the child, and pertinent health history (such as allergies or chronic conditions). Children have received the necessary immunizations as recommended for their age group by the American Academy of Pediatrics.

H- 4. The center has a written policy specifying limitations on attendance of sick children. Provision is made for the notification of parents, the comfort of ill children, and the protection of well children.

H- 5. Provisions are made for safe arrival and departure of all children which also allow for parent-staff interaction. A system exists for ensuring that children are released only to authorized persons.

H- 6. If transportation is provided for children by the center, vehicles are equipped with age-appropriate restraint devices.

H- 7. Children are under adult supervision at all times.

H- 8. Staff is alert to the health of each child. Individual medical problems and accidents are recorded and reported to staff and parents.

H- 9. Suspected incidents of child abuse and/or neglect by parents or staff or other persons are reported to appropriate local agencies.

H-10. At least one staff member, who has certification in emergency first aid treatment and cardiopulmonary resuscitation (CPR) from a licensed health professional, is always in the center.

H-11. Adequate first aid supplies are readily available. A plan exists for dealing with medical emergencies.

H-12. Children are dressed appropriately for outdoor activities. Extra clothing is kept on hand for each child.

H-13. The facility is cleaned daily to disinfect bathroom fixtures and remove thrash. Infants' equipment is washed and disinfected at least twice a week. Toys which are mouthed are washed daily. Soiled diapers are disposed of or held for laundry in closed containers inaccessible to the children. The cover of the changing table is either disinfected or disposed of after each change of a soiled diaper.

H-14. Staff wash their hands with soap and water before feeding and after diapering or assisting children with toileting or nose wiping. A sink with running hot and cold water is adjacent to the diapering area.

H-15. All equipment and the building are maintained in a safe, clean condition and in good repair (for example there are no sharp edges, splinters, protruding or rusty nails, or missing parts). Infants' and toddlers' toys are large enough to prevent swallowing or choking.

H-16. Individual bedding is washed once a week and used by only one child between washings. Individual cribs, cots, or mats are washed if soiled. Sides of infants' cribs are in a locked position when occupied.

H-17. Toilets, drinking water, and handwashing facilities are easily accessible to children. Soap and disposable towels are provided. Children wash hands after toileting and before meals. Hot water temperature does not exceed 110° F (43°C) at outlets used by children.

H-18. All rooms are well lighted and ventilated. Stairways are well-lighted and equipped with handrails. Screens are placed on all windows which open. Electrical outlets are covered with protective caps. Floor coverings are attached to the floor or backed with non-slip materials. Non-toxic building materials are used.

H-19. Cushioning materials such as mats, wood chips, or sand are used under climbers, slides, or swings. Climbing equipment, swings, and large pieces of furniture are securely anchored.

H-20. All chemicals and potentially dangerous products such as medicines or cleaning supplies are stored in original, labeled containers in locked cabinets inaccessible to children. Medication is administered to children only when a written order has been submitted by a parent, and the medication is administered by a consistently designated staff member.

H-21. All staff are familiar with primary and secondary evacuation routes and practice evacuation procedures monthly with children. Written emergency procedures are posted in conspicuous places.

H-22. Staff are familiar with emergency procedures such as operation of fire extinguishers and procedures for severe storm warnings. Smoke dectectors and fire extinguishers are provided and periodically checked. Emergency telephone numbers are posted by phones.

I. Nutrition and Food Service

Goal: The nutritional needs of children and adults are met in a manner that promotes physical, social, emotional, and cognitive development.

I- 1. Meals and/or snacks are planned to meet the child's nutritional requirements as recommended by the Child Care Food Program of the U.S. Department of Agriculture in proportion to the amount of time the child is in the program each day.

I- 2. Menu information is provided to parents. Feeding times and food consumption information is provided to parents of infants and toddlers at the end of each day.

I- 3. Mealtimes promote good nutrition habits. Toddlers and preschoolers are encouraged to serve and feed themselves. Chairs, tables, and eating utensils are suitable for the size and developmental levels of the children. Mealtime is a pleasant social and learning experience for children. Infants are held in an inclined position while bottle feeding. Foods indicative of children's cultural backgrounds are served periodically. At least one adult sits with children during meals.

I- 4. Food brought from home is stored appropriately until consumed.

I- 5. Where food is prepared on the premises, the center is in compliance with legal requirements for nutrition and food service. Food may be prepared at an approved facility and transported to the program in appropriate sanitary containers and at appropriate temperatures.

J. Evaluation

Goal: Systematic assessment of the effectiveness of the program in meeting its goals for children, parents, and staff is conducted to ensure that good quality care and education are provided and maintained.

J- 1. The director (or other appropriate person) evaluates all staff at least annually and privately discusses the evaluation with each staff member. The evaluation includes classroom observation. Staff are informed of evaluation criteria in advance. Results of evaluations are written and confidential. Staff have an opportunity to evaluate their own performance. A plan for staff training is generated from the evaluation process.

J- 2. At least annually, staff, other professionals, and parents are involved in evaluating the program's effectiveness in meeting the needs of children and parents.

J- 3. Individual descriptions of children's development are written and compiled as a basis for planning appropriate learning activities, as a means of facilitating optimal development of each child, and as records for use in communications with parents.

Dr. Caldwell. We added that they must check references of previous employment in child care in order to be accredited.

Let me mention very briefly this second thing, and that has to do with Federal regulation. I am not scared of Federal regulation in the child care field. It does not bother me in the least because I think that we have to have some Federal standards.

It was interesting yesterday to hear a Congressman from New York, the State of New York, and the city of New York reply in the negative when somebody asked him if they had licensing there. He was not aware that they have had day care licensing in the city of New York probably 40 years. I used to live in Syracuse, NY, and we certainly had it when I lived there.

When we have State laws, it is very easy for people not to know that they are there, to lose track of them. When we have Federal regulations, people do become aware of them, and Federal regulations could help provide a basement, if you will, across the board for all 50 States.

We are a federation in this country. We are a nation. Yet it was brought out in statements made earlier this morning that these records checks could not work unless we had some kind of Federal system. All you would have to do is go from Arkansas, to Tennessee, or Oklahoma, to New Mexico and avoid detection unless we had Federal standards.

For 20 years some day care regulations have been sitting around in various Federal offices here in Washington. They have been worked on by experts in the field, by people in various Federal offices. When Patricia Harris was Secretary of HEW, she signed them into regulation, but then they were waivered and put in mothballs. At the present time we still do not have any, though we have a pretty good consensus about what quality is.

Since I am not following my notes, I have got to amplify this bit about quality. Quality by and large is the quality of the people in the program, and there are a lot of good people who work in child care in this country, and they do it for very little public recognition. They do it with low status. They do it because they love children and they are "good" with children. They like to work with them. They find joy with this, and if you hire people who do not have those characteristics, believe me, your children are going to suffer.

It does not all come automatically. The people who do this work have got to be trained. The training is just as vital as it is for any professional field, and many of us would be horrified to think that our children, age 6 or above, were being taught by someone who only had an eighth grade education. Yet the learning that goes on in those preschool years is probably more vital than the learning that takes place later. We have been willing to say:

> You do not have to have any special training. You do not have to know how children grow and develop. You do not have to know how to influence them positively. You do not have to know how to help them develop morally and emotionally.

I think we have got to stop that, and the Federal Government has an important role to play in that.

Let me conclude with one other statement, and in it I want to come back to the business of parents. I was very touched by the parents this morning who had their little boy here and by the other lady who spoke of the trauma her child had suffered. I really liked the statement from the mother who said, "My little boy told me," and therein lies the secret to the prevention of child abuse.

The most important foundation for preventing abuse lies in the nature of the parent-child relationship. The little boy told his father also. Only when you have that basic trust between parent and child, and only then when parents exercise their rights and responsibilities vis-a-vis the individuals who provide valuable and indispensable supplementation of parental care, can professional child care become the quality service that parents need and children deserve.

So, I want to conclude by urging you to read my longer statement, urging you to continue looking at child care in this way, but remembering that there is another side. Please remember that there are many, many centers out there where there are hardworking people, struggling to do a good job, unappreciated, and unrecognized in terms of the status that we accord professions in this society, and paid wages so low, lower than sometimes the neighborhood babysitter is paid when parents go out to a movie. I want to remind us all that those of us who represent the field of early childhood—and child care is one part of it—are deeply committed to trying to create environments for children that can help parents in their jobs of raising the children adequately to become good citizens, to develop their potentials, to grow up normally. This field cannot play a role in helping families do that without public support and without, if I may say so, some public recognition of the importance of the field, the dedication of most of the people in it, and a lot of help.

Thank you.

[The prepared statement of Dr. Caldwell follows:]

PREPARED STATEMENT OF BETTYE M. CALDWELL

Mr. Chairman, members of the Committee, I am Bettye Caldwell, President of the National Association for the Education of Young Children, the largest national organization of child care and early childhood professionals. In addition, I am the Donaghey Distinguished Professor of Early Childhood Education at the University of Arkansas at Little Rock. My entire professional life has been devoted to enhancing early educational opportunities for children. Spucifically, for 20 years I have conducted studies to examine the developmental effects of child care and have worked in, directed, and trained people to work in this vitally important field. I have watched it grow. I am very pleased to appear before you today. I am as upset as you upon hearing the preceding discussion. I want to talk, not about what is being done, but I want to talk about what can be done.

My testimony will emphasize three points:

(1) The reported instances of sexual abuse in child care centers must be examined in the overall context of enduring concerns about the development of children. Ultimately, the success of any solution to the sexual abuse problem will hinge on our ability to raise human beings who are concerned and loving and humane people. As with families, the child care system is vital to that task, and our job as advocates for and protectors of young children is to do whatever we can to enhance those aspects of child care that we know determine quality: Qualified staff, adequate numbers of of staff, coverage by adequate numbers of staff at all times, adequate working conditions for staff, and ample opportunities for informed parent selection, open visitation, observation, and participation in their child care programs.

(2) Efforts were under way by professional organizations serving child care providers to monitor their own activities, long before the headlines reported instances of abuse in day care. I will briefly describe one of these efforts to you today — an accreditation initiative of NAEYC which is explicitly designed to promote joint parent and provider monitoring of child care.

(3) The federal government also has a role to play in the promotion of high quality child care. While federal subsidies have supported child care programs for many years, the federal government has consistently abdicated responsibility for assuring that these funds are channeled to quality programs. It is a shame that it has taken a crisis for concerns about quality to resurface at the federal level. That concern has been there, often latent and often blocked, for 20 years. But, now that the debate has begun, I hope you will work with us to support the training of child care providers, and to develop and fund appropriate federal child care standards.

At the outset, I want to reassure this Committee that I do not know of a single individual in the child care field who is the slightest bit complacent about the recent allegations of abuse occurring in child care centers. It is also important for you to recognize that child care is not a hotbed of child abuse. In relation to the large numbers in care, incidence is very low — thank heaven. Therapeutic child care programs are among the most effective rehabilitation methods for children who have been subjected to abuse within the family.

The reported instances of abuse are most of all a tragedy to the children and families involved. But they are also felt keenly by a profession that is devoted to the care and nurture of children; a profession that is committed to creating environments that will optimize, not distort, the development of children. The people who have worked to upgrade quality in the field also suffer when the children and their parents suffer. As parents and citizens, we have to be concerned if even one case of sexual abuse occurs in child care. As professionals, we have to be even more concerned.

I am gratified that this Committee is taking a serious look at the topic of sexual abuse and child care. But, I cannot be emphatic enough about urging you to examine the specifics of this issue in the context of broader issues surrounding the quality of care that is provided in today's child care market.

When it comes to seeking solutions, we are not dealing with isolated instances of sexual abuse in child care. We are dealing with a child care market that is poorly regulated, one in which child care providers receive disgracefully low wages, and one in which many parents who need child care do not have the resources to purchase care in programs that meet their own standards of quality. Let me offer some more specific examples:

1) NAEYC just completed a study of caregiver wages based on a nationwide sampling of its membership. Although 70% of the respondents had received college- or higher-level training and 60% had received at least some college-level training in early childhood education, over half earned an hourly wage of $7.50 or less. Even among lead teachers and directors — those in supervisory positions — 74% earned $10 or less per hour. From one-half to two-thirds of the employees in child care have minimal educational training (high school or less) and begin their employment at minimum wage.

2) Although statistics are difficult to obtain, it is estimated that between 70% and 90% of all family day care homes are unlicensed, yet this is the most popular form of day care in this country.

3) The Congressional Budget Office cites demographic data which suggests that an additional 2 1/2 million children under age 6 will join the population needing day care services during this decade.

4) A federal survey of state day care licensing provisions conducted in 1981 revealed that 31 states failed to include any specifications about staff qualifications beyond requiring a high school diploma. Only 14 states required any form of training in child development for directors of child care programs.

It is in this context that the sexual abuses occurred. Finger-printing day care providers and running criminal checks on prospective employees may catch an incidental individual who should never have been allowed into a child care program. But, shortcut solutions of this nature will fail to address underlying and far more pervasive problems: Lack of public appreciation of the importance of child care as a vital developmental service, the low status and inadequate training of child care providers, insufficient encouragement of parental participation, and meager resources for the implementation and monitoring of qualitative improvements in all types of child care arrangements. They will also completely overlook other inappropriate behaviors that can cause harm to children yet do not approach criminal proportions — inappropriate verbal discipline, sarcasm and criticism, neglect of a child's emotional needs, failure to respect ethnic background, and so on. These behaviors can only be addressed via careful selection, observation, and evaluation of child care staff by trained supervisors in the child care setting.

It is precisely because of the seriousness of the sexual abuse problem that we need to identify approaches that will really work to assure the safety of our children in child care programs.

A far more constructive and enduring approach is required. I have several suggestions that I hope will receive your serious attention as you seek means of improving the safety and quality of the child care that our children receive.

National Academy of Early Childhood Programs

Many of the points I want to make are embodied in a major new initiative of the National Association for the Education of Young Children. This organization with its 43,000 members comprising the full spectrum of early childhood professionals, has undertaken a long-term, private-sector response to the problem of promoting good quality group programs for young children and of offering both parents and caregivers a practical means for identifying good programs. It is a voluntary accreditation system for early childhood programs.

The name of this project is the National Academy of Early Childhood programs. It is perhaps best portrayed as a "Good Housekeeping Seal of Approval" for child care programs. It represents an attempt by the Early Childhood profession to apply its knowledge base to improving professional practices in the field.

The National Academy is based on the concept that real and lasting improvements in the quality of child care we provide will result only when both professionals and parents become actively involved, as partners, in a process of self-study and evaluation. I want to underscore this point, because there is no other nationwide system to assist parents as consumers in identifying good quality programs.

Participation in the Academy by child care and other early childhood programs is entirely voluntary. The decision to participate will therefore reflect a commitment on the part of individual professionals to self-improvement. (For details see Jeannette Watson's 1984 testimony before the House Select Committee on Children, Youth, and Families.)

NAEYC just has adopted evaluation criteria for the accreditation project which are based on the most current research available and which represent the consensus of our nation's experts in early childhood education. The project has also been field tested with tremendous success in 32 early childhood programs in four areas of the country: California, Florida, Minnesota, and Texas.

I would like to highlight several aspects of the accreditation system that are directly applicable to the problems of sexual abuse which you are discussing today:

First, parents are integral to the success of the accreditation project. We know that parents are the first line of defense when it comes to preventing occurrences of abuse and they are the adults to whom children are most likely to turn when they are troubled. The NAEYC guidelines require that programs implement open parent visitation policies. Then, as part of the self-evaluation process which precedes the final accreditation decision, parents complete a questionnaire which inquires specifically about the accessibility and quality of interactions between parents and caregivers.

Second, the guidelines require that every program define a probation period when hiring new staff. Even the most detailed checks of personal records will not properly assess an individual's ability to provide appropriate care for young children.

Third, staff training and development, as well as regular staff supervision and evaluation lie at the heart of the NAEYC program. One of the most consistent findings of research over the last 15 years is that positive developmental outcomes for children in child care are linked to the specialized training of their caregivers -- not just the absence of criminal records, not even years of higher education, but training that is tailored to the skills required in their profession as caregivers. The guidelines require that senior staff be highly trained to spot inappropriate caregiver behavior of all types — not just abusive behavior, but any behavior which fails to promote the healthy social, emotional, and intellectual development of children. Every center is required to provide regular staff supervision and evaluation, as well as ample opportunities for staff development. Finally, the guidelines include several provisions designed to address the support needs and working conditions of the caregivers, such as allowing adequate time for staff breaks and providing adequate employee benefits.

This accreditation program, like the Child Development Associate Credentialing program, that you heard about earlier this month, represents a good faith effort on the part of the child care profession to monitor and upgrade its own procedures and standards.

But even the best intended voluntary accreditation systems cannot begin to guarantee that further abuses will not occur in day care unless they are accompanied by equally serious and sustained efforts on behalf of other participants in the child care community.

The Role of Regulation

It is time that the federal government join with the on-going efforts of state governments and professional organizations to promote the regulation of child care programs, perhaps in the form of national reference standards for child care. In the absence of licensing standards there is no legal base for ensuring the safety of children in child care. Indeed, government licensing should be perceived not as unwarranted intrusion, but as a vigorous consumer protection program. It is incomprehensible that federal regulations exist to regulate the meat we eat, the cars we buy, and the planes we fly on, but not the quality and safety of the programs that care for our children. We must recognize that, in addition to providing a vital service, day care is a rapidly growing industry. The families that rely on this industry deserve your best protective efforts; they deserve your commitment to taking an active stand for quality day care.

There are three ingredients that should accompany any effort to develop federal child care standards:

(1) They should be solidly grounded in the best, up-to-date knowledge about the promotion of healthy child development. The knowledge base of the child care, early childhood, and child development communities has advanced signficantly in recent years. These groups would welcome the opportunity to put their expertise to work for the improvement of our nation's child care services. Specifically, both federal studies and academic research have identified easily observable factors that predict positive child outcomes; for example, staff training tailored to the skills required of child care providers, small group sizes, and high staff-child ratios. We also know that standards should specify unequivocally that parents are permitted to observe their child care program at any time they choose.

(2) They should encompass centers, groups homes, and family day care homes, while taking into account the special nature of particular child care settings.

(3) They must be accompanied by adequate funds to ensure effective implementation and monitoring. Qualitative improvements are costly. This is not news to you, but in the past this is where efforts to promulgate federal child care standards have stumbled. Without new federal dollars for the specific purpose of assisting child care programs with the costs of complying with regulations, programs will be faced with the choice of closing or passing additional costs onto parents, many of whom are poor.

Staff and Parents: The Critical Elements

Federal child care standards are one necessary ingredient for the promotion of quality child care. Nevertheless, the bottom line for any attempt to assure the protection and nurturance of our children in day care rests with the caregivers who are there in the programs caring for the children. To impose new requirements or standards without paying at least as much attention to issues of staff training, salaries, and benefits; staff-child ratios; and mechanisms for parent involvement is like putting bandaids on a broken leg.

You can develop the most stringent regulations imaginable, but without a staff that is qualified to translate them into the day-to-day practices that ultimately promote the healthy development of children, we will all be left with an empty promise of quality. Moreover, some of the most critical aspects of caring for children (e.g., expressing respect and consideration toward children, promoting continuity in children's caregivers) simply cannot be regulated.

The best way to protect the day-to-day care of children in child care programs is to assure that the caregivers are qualified, that there are enough of them, that they are adequately compensated for the vital and demanding service they provide, and that parents have the purchasing power to promote the development of high-quality programs.

This is not a small or inexpensive task and there is no single way to accomplish it. Moreover, the federal government is in an unique position to adopt an essential leadership role on several fronts:

(1) Federal initiatives for training programs aimed at all child care providers, at those who monitor child care programs, and at parents are a vital need. It is important that such initiatives encompass in-service, as well as more formal, types of training.

(2) Increased assistance for the direct child care subsidies which benefit those families with inadequate resources to purchase quality child care is also needed. This assistance may be channeled through existing programs as long as it is specifically targeted to child care services, or new initiatives may be required.

(3) The dependent care tax credit, which disproportionately benefits the wealthy as presently structured, should be more carefully targeted on lower income families while also recognizing that it will never assist the poor. At the very least, the credit should be made refundable.

(4) The Child Care Information and Referral Services Act — presently included in the House version of the Head Start and Human Services Amendments of 1984 (H.R. 5885), but excluded from its counterpart in the Senate (S 2565) — could make a tangible contribution to facilitating the efficient use of existing child care resources and to educating parents and providers about how to recognize and offer high quality child care.

(5) The Child Care Food Program is the singlemost important factor which has encouraged family day care providers to become licensed and is the only source of training, albeit limited, presently available for this group. It deserves your firm support.

Coordination with State Child Abuse and Neglect Agencies

In each state, there is a specific office charged with responsibility for receiving and investigating child abuse and neglect reports. Child care personnel in all states should be familiar with their state laws about child abuse reporting and should know the names and phone numbers of the staff members of the agency responsible for handling such reports. Many of these organizations have developed programs and materials for for adults and children on sexual abuse.

In this same vein, most large communities have a day care program that offers respite care for abused and neglected children. The specialized staff of these programs are ideally suited to offer in-service training for other child care providers in their community and should be rewarded for efforts of this nature. It would be extremely helpful if you could provide seed money for pilot projects of this nature.

Finally, I return to the parents. The most important foundation for preventing abuse lies in the nature of the parent-child relationship. Only when basic trust is strengthened between parent and child, and only when parents exercise their rights and responsibilities vis-a-vis those individuals who provide valuable and indispensable supplementation of parental care, can professional child care become the quality service that parents need and children deserve. Indeed, the ultimate prevention for child sexual and physical abuse is to raise all children in loving and trusting environments which will teach them to be loving and trusting adults.

I would like to conclude by reminding you that high quality child care, which lovingly supplements the care and education children receive from their families, remains the best way we know to help families carry out their task of childrearing while remaining economically independent. Measures which are punitive in nature or which adopt superficially appealing solutions as a panacea to the complex problems associated with providing quality child care services will create a false sense of security. What is needed is a public commitment to work for higher quality child care. As a nation we should not be willing to settle for anything less.

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Senator SPECTER. Thank you very much, Dr. Caldwell.

I would like to turn now to Nancy Brown, Director of the Senate Employees Child Care Center.

Dr. Brown, thank you very much for joining us today. Your full statement will be made a part of the record, and we look forward to your testimony.

Dr. CALDWELL. Do you think I could leave? I hate to leave, but I am going to miss my plane, and it is my twin's birthday.

Senator SPECTER. No, we understand, and we appreciate your being here and we appreciate your testimony.

Dr. CALDWELL. Thank you.

Senator SPECTER. Dr. Brown.

STATEMENT OF NANCY H. BROWN

Dr. BROWN. Senator Specter, I welcome the opportunity to testify today before you regarding one of the critical problems facing the child care industry today. Since early this year I have been the Director of the Senate Employees Child Care Center, which is an independent, nonprofit child care facility serving primarily the employees of the U.S. Senate.

Of course, my testimony reflects my own personal views and my past experiences in child care and is not necessarily the views of the center of which I direct now.

Senator SPECTER. You say it does not necessarily reflect the view of the center or the Senate?

Dr. BROWN. It does not necessarily reflect the view of the Board of Directors of the Senate Employees Child Care Center.

Senator SPECTER. Or the Senate?

Dr. BROWN. Or the Senate, right.

Senator SPECTER. We do not know that anything does that.

Dr. BROWN. However, I would like to say that the U.S. Senate is to be commended for its response to the needs of its own employees in this important area.

We are operating at maximum capacity. Waiting lists are growing, and we are clearly unable to meet the needs. Our situation is typical. Statistics show that the availability of slots or placements in child care is far exceeded by the demand for care.

The unfortunate and alarming fact is that these statistics reveal only the number of spaces available, without regard for the quality of care. Professionals in the field continue to identify the quality of care as critical to the issue, as we have heard from Dr. Caldwell.

The problem on which we are focusing our attentions today relates to the recent incidents of sexual abuse of children in child care centers. I am afraid that there are other damaging experiences happening to young children that are even more widespread, less shocking, and less subtle, but dangerous to the delicate minds and emotional development of young children.

However, recognizing that attitudes and conditions in our country today are not conducive to quality child care, we must immediately identify measures to prevent such attrocious kinds of abuse to young children.

The most obvious and effective way to prevent such abuse is to focus on quality. Without question, the key to quality care is the people who provide the care. It is also people who commit acts of abuse against children. While there are many conscientious and well trained people working in child care centers, there are not nearly enough. Attracting and sustaining the kind of sensitive, well trained and committed people we need to serve as staff is one of the most difficult problems facing the child care center director.

The reasons for this problem are clear and easily identified, and the continuous pressure and anxiety it exerts on the center director cause many of the best to give up.

The result is that adequate background checks are often not done on prospective child care employees. The director is not negligent, but you must recognize that a great many child care centers are operated as single, small units. There are some resources available, but they are limited, to put it mildly, and sometimes center directors become so desperate for staff that they are willing to take anybody that they can get off the street.

Deviant personalities or individuals who have had difficulties generally fail to disclose that information when they apply for jobs. Consequently, the director must make a judgment on the applicant's suitability for the job.

While it is obvious that supervision and careful monitoring are equally important to protecting children, I must emphasize that the responsibilities placed on the well trained teachers and directors in centers to care for the children are already enormous.

I take great pride in my profession, and I believe that there are scores of very high quality centers, providing a rich and stimulating environment for young children. Frankly, I think the parents in this country are fortunate to have the ones we have.

But the demands for child care are so great that some people have seen it as a way to make an easy profit. That terrifies me and my colleagues.

Doing a criminal record check seems to be the least that we can do to prevent an unsuitable person from being employed in a child care center. I must admit to some fear that such an effort, if poorly carried out, could cause other problems, but I am certain that the priority rests with the protection of young children.

At the same time, such a measure is just the tip of the iceberg. Other networks need to be developed so that the center directors are not isolated and could track an applicant's employment history in other centers. The easiest and most obvious preventive strategy is the involvement of parents. Parents should never place their child in a center where parents are not welcome or where their access is limited in any way.

If the center program has not set up a formal mechanism for parents to observe and interact with teachers, parents should be very cautious. The difficulty is often caused by the distance between a parent's job and the center. That is the unique and wonderful aspect of the work site child care center.

At the Senate Employees Child Care Center, parent involvement is not a cliche. Parents come and go during the day, and they are encouraged to do so. Children frequently have lunch with their parents, and in some cases it involves both parents, making it a family together.

Parents who do not have that promixity should make the time to linger in the morning or evening occasionally so that they have the opportunity to spend time with the child in the child care setting.

In closing, I urge you, parents and other citizens to acknowledge and support those professionals who are trying desperately to provide high quality child care to young children. While we attempt to set up mechanisms to monitor and regulate ourselves, it is only through collaboration with other leaders that such mechanisms will become effective. Unified effort is essential to making the care of our young children the priority it should be in our country.

[The prepared statement of Dr. Brown follows:]

PREPARED STATEMENT OF NANCY H. BROWN

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON JUVENILE JUSTICE: I WELCOME THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY REGARDING ONE OF THE CRITICAL PROBLEMS FACING THE CHILD CARE INDUSTRY.

SINCE EARLY THIS YEAR, I HAVE SERVED AS THE DIRECTOR OF THE SENATE EMPLOYEES' CHILD CARE CENTER, AN INDEPENDENT, NON-PROFIT CHILD CARE FACILITY SERVING PRIMARILY THE CHILDREN OF SENATE EMPLOYEES. (OF COURSE, MY TESTIMONY TODAY REFLECTS MY PERSONAL VIEWS, NOT NECESSARILY THOSE OF THE CENTER.)THE U.S. SENATE IS TO BE COMMENDED FOR ITS RESPONSE TO THE NEEDS OF ITS OWN EMPLOYEES IN THIS IMPORTANT AREA. WE ARE OPERATING AT MAXIMUM CAPACITY, WAITING LISTS ARE GROWING, AND WE ARE CLEARLY UNABLE TO MEET THE NEED.

OUR SITUATION IS TYPICAL. STATISTICS SHOW THAT THE AVAILABILITY OF SLOTS OR PLACEMENTS IN CHILD CARE IS FAR EXCEEDED BY THE DEMAND FOR CARE. THE UNFORTUNATE AND ALARMING FACT IS THAT THESE STATISTICS REVEAL ONLY THE NUMBER OF SPACES AVAILABLE, WITHOUT REGARD FOR THE QUALITY OF CARE. PROFESSIONALS IN THE FIELD CONTINUE TO IDENTIFY THE QUALITY OF CARE AS CRITICAL TO THE ISSUE, AS YOU HAVE BEEN TOLD BY DR. CALDWELL.

THE PROBLEM ON WHICH WE ARE FOCUSING OUR ATTENTION TODAY RELATES TO THE RECENT INCIDENTS OF SEXUAL ABUSE OF CHILDREN IN CHILD CARE CENTERS. THE MOST OBVIOUS AND EFFECTIVE WAY TO PREVENT SUCH ABUSES IS TO FOCUS ON QUALITY. I AM AFRAID THAT THERE ARE OTHER DAMAGING EXPERIENCES HAPPENING TO YOUNG CHILDREN THAT ARE EVEN MORE WIDESPREAD --- LESS SHOCKING AND MORE SUBTLE, BUT DANGEROUS TO THE DELICATE MINDS AND EMOTIONAL DEVELOPMENT OF YOUNG CHILDREN. HOWEVER, RECOGNIZING THAT ATTITUDES AND CONDITIONS IN OUR COUNTRY TODAY ARE NOT ALWAYS CONDUCIVE TO QUALITY CHILD CARE, WE MUST IMMEDIATELY IDENTIFY MEASURES TO PREVENT SUCH ATROCIOUS KINDS OF ABUSE TO YOUNG CHILDREN.

WITHOUT QUESTION, THE KEY TO QUALITY CARE IS THE PEOPLE WHO PROVIDE THAT CARE. IT IS ALSO PEOPLE WHO COMMIT ACTS OF ABUSE AGAINST CHILDREN. WHILE THERE ARE MANY CONSCIENTIOUS AND WELL-TRAINED PEOPLE WORKING IN CHILD-CARE CENTERS, THERE ARE NOT NEARLY ENOUGH. ATTRACTING AND SUSTAINING THE KIND OF SENSITIVE, WELL-TRAINED, AND COMMITTED PEOPLE WE NEED TO SERVE AS STAFF IS ONE OF THE MOST DIFFICULT PROBLEMS FACING THE CHILD CARE DIRECTOR. THE REASONS FOR THIS PROBLEM ARE CLEAR AND EASILY IDENTIFIED AND THE CONTINUOUS PRESSURE AND ANXIETY IT EXERTS ON THE CENTER DIRECTOR CAUSE MANY OF THE BEST TO GIVE UP.

THE RESULT IS THAT ADEQUATE BACKGROUND CHECKS ARE OFTEN NOT DONE ON PROSPECTIVE CHILD CARE EMPLOYEES. THE DIRECTOR IS NOT NEGLIGENT, BUT YOU MUST RECOGNIZE THAT A GREAT MANY CHILD CARE CENTERS ARE OPERATED AS SINGLE SMALL UNITS. THERE ARE SOME RESOURCES AVAILABLE, BUT THEY ARE LIMITED TO PUT IT MILDLY, AND SOMETIMES CENTER DIRECTORS BECOME SO DESPERATE FOR STAFF THAT THEY ARE WILLING TO TAKE SOMEONE "OFF THE STREET." DEVIANT PERSONALITIES OR INDIVIDUALS WHO HAVE HAD DIFFICULTIES GENERALLY FAIL TO DISCLOSE THAT INFORMATION WHEN THEY APPLY FOR JOBS. CONSEQUENTLY, THE DIRECTOR MUST MAKE A JUDGMENT ON THE APPLICANT'S SUITABILITY FOR THE JOB. WHILE IT IS OBVIOUS THAT SUPERVISION AND CAREFUL MONITORING ARE EQUALLY IMPORTANT TO PROTECTING CHILDREN, I MUST EMPHASIZE THAT THE RESPONSIBILITIES PLACED ON THE WELL-TRAINED TEACHERS AND DIRECTORS IN CENTERS TO CARE FOR THE CHILDREN ARE ALREADY ENORMOUS.

I TAKE GREAT PRIDE IN MY PROFESSION AND I BELIEVE THAT THERE ARE SCORES OF VERY HIGH QUALITY CENTERS PROVIDING A RICH AND STIMULATING ENVIRONMENT FOR YOUNG CHILDREN. FRANKLY I THINK PARENTS IN THIS COUNTRY ARE FORTUNATE TO HAVE THE ONES WE HAVE, BUT THE DEMANDS FOR CHILD CARE ARE SO GREAT THAT SOME PEOPLE HAVE SEEN IT AS A WAY TO MAKE AN EASY PROFIT. THAT TERRIFIES ME AND MY COLLEAGUES!

DOING A CRIMINAL RECORD CHECK SEEMS TO BE THE LEAST THAT WE CAN DO TO PREVENT AN UNSUITABLE PERSON FROM BEING EMPLOYED IN A CHILD CARE CENTER. I MUST ADMIT TO SOME FEAR THAT SUCH AN EFFORT, IF POORLY CARRIED OUT, COULD CAUSE OTHER PROBLEMS, BUT I AM CERTAIN THAT THE PRIORITY RESTS WITH THE PROTECTION OF YOUNG CHILDREN.

AT THE SAME TIME, SUCH A MEASURE IS JUST THE "TIP OF THE ICEBERG." OTHER NETWORKS NEED TO BE DEVELOPED SO THAT CENTER DIRECTORS ARE NOT ISOLATED AND COULD TRACK AN APPLICANT'S EMPLOYMENT HISTORY IN OTHER CENTERS.

THE EASIEST AND MOST OBVIOUS PREVENTIVE STRATEGY IS THE INVOLVEMENT OF PARENTS. PARENTS SHOULD NEVER PLACE THEIR CHILD IN A CENTER WHERE PARENTS ARE NOT WELCOME OR WHERE THEIR ACCESS IS LIMITED IN ANY WAY. IF THE CENTER PROGRAM HAS NOT SET UP A FORMAL MECHANISM FOR PARENTS TO OBSERVE AND INTERACT WITH TEACHERS, PARENTS SHOULD BE VERY CAUTIOUS. THE DIFFICULTY IS OFTEN CAUSED BY THE DISTANCE BETWEEN A PARENT'S JOB AND THE CENTER. THAT IS THE UNIQUE AND WONDERFUL ASPECT OF THE WORKSITE CHILD CARE CENTER.

AT THE SENATE EMPLOYEES' CHILD CARE CENTER, PARENT INVOLVEMENT IS NOT A CLICHE. PARENTS COME AND GO DURING THE DAY, AND THEY ARE ENCOURAGED TO DO SO. CHILDREN FREQUENTLY HAVE LUNCH WITH THEIR PARENTS, AND IN SOME CASES, IT

INVOLVES BOTH PARENTS MAKING IT A FAMILY GET-TOGETHER. PARENTS WHO DO NOT HAVE THAT PROXIMITY SHOULD MAKE THE TIME TO LINGER IN THE MORNING OR EVENING OCCASIONALLY SO THAT THEY HAVE THE OPPORTUNITY TO SPEND TIME WITH THE CHILD IN THE CHILD CARE SETTING.

IN CLOSING, I URGE YOU, PARENTS, AND OTHER CITIZENS TO ACKNOWLEDGE AND SUPPORT THOSE PROFESSIONALS WHO ARE TRYING DESPERATELY TO PROVIDE HIGH QUALITY CHILD CARE TO YOUNG CHILDREN. WHILE WE ATTEMPT TO SET UP MECHANISMS TO MONITOR AND REGULATE OURSELVES, IT IS ONLY THROUGH COLLABORATION WITH OTHER LEADERS THAT SUCH MECHANISMS WILL BECOME EFFECTIVE. UNITED EFFORT IS ESSENTIAL TO MAKING THE CARE OF OUR YOUNG CHILDREN THE PRIORITY IT SHOULD BE IN OUR COUNTRY.

Senator **SPECTER**. Do you make a criminal record check of people who work in your center?

Dr. **BROWN**. No.

Senator **SPECTER**. Do you talk to the prior employers to see if any has a record of molesting children?

Dr. **BROWN**. I have not in the past.

Senator **SPECTER**. Are you going to?

Dr. **BROWN**. I am not sure I know how to do that.

Senator **SPECTER**. How are you funded?

Dr. **BROWN**. How am I funded? Parent tuition, and in fact, someone mentioned earlier about all of the private centers having private money or private foundations. I was shocked. I know none who have that.

Senator **SPECTER**. You are funded solely by tuition?

Dr. **BROWN**. Yes.

Senator **SPECTER**. Paid by the people who use the facilities?

Dr. **BROWN**. That is correct. We do have space provided by the Senate however.

Senator **SPECTER**. Where is the day care center located?

Dr. **BROWN**. In the Immigration Building.

However, I have come from other centers. I have directed two centers previous to this, and in neither case was there any funding except that from parent tuition, and I can say to you that, on the one hand, that protects children in the sense that the parents have the ability to withdraw their child if they are not satisfied with the service.

Senator **SPECTER**. How much is the tuition?

Dr. **BROWN**. It ranges according to parent income. There is a sliding fee scale that goes both up and down, by the way.

Senator **SPECTER**. What is the top?

Dr. **BROWN**. The top is $110 per week.

Senator **Specter**. $110 per week per child?

Dr. **Brown**. Right.

Senator **Specter**. Dr. Brown, thank you very much for coming. We very much appreciate your being here. Thank you.

The subcommittee is adjourned.

[Whereupon, at 12:40 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT SUBMITTED BY INGRID HORTON, PRESIDENT WASHINGTON, D.C. AND MARYLAND CHAPTERS OF SOCIETY'S LEAGUE AGAINST MOLESTATION (SLAM)

Mr. Chairman, Ladies & Gentleman,

On behalf of Society's League Against Molestation, I wish to first say that I am both honored and delighted to be here today to present testimony on bills which can indeed have an immense impact on the future of this nation. Children are our most important resource, they are the adults of tomorrow and the future of your country. I cannot emphasize enough to you how important it is that these children be given the right to grow up in a nourishing, healthy emotional and physical environment in order that they become stable, responsible law-abiding adults. I do not float in the sky; I have my feet on the ground and I know that we will never create a society which is crime free, but the incidence of child sexual abuse in our society today has reached astronomical figures and we must take action to prevent further victimization. That is why I joined SLAM and that is why I am here today.

For those of you who may be unfamiliar with SLAM's goals, they are:

to educate the public about the dangers and consequences of child molestation and about prevention of this crime;

to counsel and assist victims and their families;

to research and study aspects of child molestation;

to investigate into the operation and efficiency of institutions dealing with child molestation problems;

to investigate and evaluate current approaches to child molestation by components of the criminal justice system and other institutions;

to support effective approaches by governmental agencies dealing with child molestation problems;

and to assist organizations throughout the U.S. which have purposes similar to those of SLAM.

For those of you who may not be aware of it, child molesters frequently seek work which brings them into contact with the particular age group of victim in which they are sexually interested. Thus, the pedophile who prefers three to five year olds will seek work in a local nursery school or day care center. The offender interested in young boys will offer his services to the local soccer club or boy scouts troop. It is a known fact that pedophiles seek either paid or volunteer positions which bring them into frequent contact with their victims. They need both a position of power over them (which a teacher, or camp counselor obviously has) and they need time to seduce them. If they see the children on a daily basis, it will not take them long to win their trust. They know all the tricks of seduction, they know a likely victim when they see one. A child molester, with hundreds of victims, once said "show me an obedient child and I'll show you an easy victim". It is also a fact that child molesters in positions of trust and authority have multiple victims. Hundreds of children fall prey to his perverse activities, not the mere 20 or so mentioned in the newspapers or on the news. Many times, children will not admit that they have been molested, or their parents will not allow them to talk about the incident to the police, or anybody else. Thus, the true number of victims remains unknown.

Let us turn to a typical example of a pedophile who has no sexual preference, but likes very young children. He applies for work as a nursery school teacher. He is very kind to the children and gives them lots of attention. These children often have working, busy parents and they enjoy the fun games he plays with them and all the special attention. They are too young to know of his intentions. They are too trusting to question his authority. They are too fearful to say no. He threatens the children by saying that he will hurt their parents, or their favorite animal, or that nobody will believe them if they tell and that their parents will be angry and will reject them. They cater to his wishes. He takes photographs of them naked, or in certain poses, alone or with others, or with him. He kisses and fondles them. The children are trapped. They may well go home and tell their mothers that their teacher took photographs of them, but unless the parents ask specific questions, they are not likely to offer the information that the photographs were taken without their clothes, to say the least. The mother might easily reply " well, that's very nice. I'll look forward to seeing them". The child might even tell the parent that she/he does not like the teacher because she/he has to do things she/he doesn't want to do. Here again, the unknowing mother could well answer "know he is your teacher and you must do as he says. You can't always do just what you want. Sometimes we all have to do things we don't want to do." The parent has, of course unknowingly, strengthened the pedophiles power over the child. During the time that these molestations are occurring, it is quite possible that certain other people in the nursery will have noticed odd incidents, as was the case in the Robert McCormick incidents. Apparently, he had been seen to have been sexually excited when pulling children on to his lap, but the teachers who saw this, did not think it worth reporting to the authorities. Even the questionable incidents which did occur and which were reported to the authorities, did not receive any kind of attention. Believe it or not, this is not an unusual situation. It was also true in the case of Karoly Barta, the owner and ballet master of Dance for Washington. He had been observed fondling and orally copulating a young child in his school, but the person informed of the incident refused to take action. As a result, numerous other children were abused. These are good examples because these men were both, finally, convicted and are serving prison terms. However, they will be released and will, I have no doubt at all, seek new victims. I base this assumption on extensive research. Psychiatrists and psychologists alike know that there is no known mental disorder which causes pedophilia and that there is now known cure. Pedophiles admit that the only way to stop them from reoffending is to keep them locked up. Not all pedophiles will admit this of course, but those who have been released certainly have a hard time proving they have been cured. And, remember, each time a molester victimizes another child, he robs that child of his right to grow up in a free, healthy environment and imposes tremendous emotional and financial strains on the victims family. Anyone who has seen, first hand, what molestation does to a victim and his/her family will, in my opinion, support legislation which can prevent this kind of crime.

To get back to Messrs. McCormick and Barta. If they are released from prison in the near future, which they will be, their previous crimes against children will not be made known to their future employers. If, because of media coverage, they are forced to move to another state, they will simply seek the same kind of work again. Mr. Barta, for example, claims he can't do anything else except teach ballet. Fair enough. Let him teach adults. But how are we going to keep him away from children? If he were on the central computer, would the person from whom he applies for his licence to open a new ballet school be mandated to check with the computer first? What if the computer did show that he had a record, would he be authorized to refuse him a licence? Supposing Mr. Barta then moves on to another state, where the employee is too lazy to check the computer, or is charmed by Mr. Barta into believing that it is not necessary? What would the penalty be for not checking? Mr. Barta, in the interim quite desperate, I would assume, would probably offer volunteer services. Would the volunteer organization be required by law to check the computer first. If so, who would pay for these checks? What would the penalty be for volunteer agencies who did not comply? Perhaps some kind of coercive method could be used to encourage them. For example, grants would only be made available to those persons who, without exception, make use of the computer file. I personally feel that voluntarily submitting the pertinent information for the computer file is an important short-coming, because so many people would fail to do so, for various reasons. They could be just plain lazy, or they don't believe child sexual abuse takes place, or they think that it doesn't harm the child, or that the child asked for it in the first place, or they don't want to get involved in such an uncomfortable issue. I assure you that, if everybody who had had suspicions about certain individuals had taken action on those suspicions,many children would have been saved from the devastating effects of child molestation. It is better to report and protect the child, than not to report and to protect the offender. Here I would like to take a quote from the Congressional Record of March 13, 1984: "People are qualified for civil liberty in exact proportion to their disposition to put moral chains on their appetities".

A concern that SLAM and other victim-oriented organizations have is that so much emphasis has been placed on the protecting the offender. His rights are discussed and protected at great length. Everybody is concerned with not tainting his otherwise honorable reputation. Excuses have been made for why the central computer should not be used. It infringes on certain rights of the people applying for work which brings them into contact with children. In all honesty I must say that if somebody wants to work with children, and truly has their best interest at heart, I cannot believe that they would oppose having their record checked to see if they had previously been convicted or arrested for a crime involving child sexual abuse. In my humble opinion, anyone who opposes this kind of routine check is not worthy to work with our children. Either he requires further education in the area of child sexual abuse or, worst still, he is a molester.

Unfortunately, I do not have the time here to go into the details of the effects of child sexual abuse on society. Let it suffice to say that a high percentage of prostitutes, both male and female, was sexually abused, that 80% of institutionalized mental patients was sexually abused during childhood, that a high percentage of these children become chemically dependent and that many of them engage in criminal activities. Mothers who were sexually abused as children often physically abuse their own children. And so on and so on.

It is imperative that action be taken to protect the innocence of our children and I assure you that SLAM will do all in its power to support legislation which will help attain our goals - to prevent the victimization of our children.

Legal Matters

Sexual Exploitation of Children

An Overview of Its Scope, Impact, and Legal Ramifications

" '. . . prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.' "

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By
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Introduction

The past six years have seen increased public and professional concern about an insidious form of child abuse—the exploitation of children for sexual stimulation and commercial gain. Media attention to the problem has produced graphic and alarming reports about a situation too disturbing to fully comprehend. Additionally, Congressional hearings on the subject, culminating in new federal legislation and reviewing its implementation, have given the problem national attention.[1]

Two important recent developments at the federal level have also occurred. The first is the release on April 20, 1982, of a report by the U.S. General Accounting Office on teenage prostitution and child pornography and governmental efforts to deal with these problems.[2] The second is a decision of the U.S. Supreme Court in the case of *New York v. Ferber*, in which the Court unanimously affirmed the constitutionality of state laws which prohibit the dissemination of material depicting children engaged in sexual conduct regardless of whether the material is obscene.[3]

Speaking for the Court, Justice White stated that the use of children as subjects of pornographic materials "is harmful to the physiological, emotional, and mental health of the child" and that the "prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance."

The Scope of Child Sexual Exploitation

Children are sexually exploited in a variety of ways. Most commonly, they are used as prostitutes or models for the production of pornographic photographs and films. Child pornography is generally defined as films, photographs, magazines, books and motion pictures which depict children in sexually explicit acts, both heterosexual and homosexual. Production, distribution and sale of child pornography is a secretive business,

Mr Davidson

making a determination of its full extent extremely difficult. Estimates of the number of children involved range from the thousands to the hundreds of thousands. The statistics cannot be accurately verified and the facts and figures vary, but one thing is clear: a significant number of children are being sexually exploited throughout the country.

Some child pornography and child prostitution operations have become highly organized on a nationwide scale. To date, police have uncovered child pornography and prostitution centers in many large cities. However, operations have also been discovered in suburban and rural communities. More recently, allegations of sexual exploitation of young Congressional pages in Washington, D.C. have made headlines.

There have also been cases where child pornography and prostitution operations have been organized into "sex rings." For example, a Tennessee minister who operated a home for wayward boys encouraged the boys to engage in orgies. He then filmed them with hidden cameras and sold the films. Also, he arranged for "sponsors" to come to the home and have sex with the boys.

However, child pornography is generally a "cottage industry," with production occurring surreptitiously in private homes and motel rooms. Consequently, combatting the problem and protecting the children can be very difficult. It is, however, an essential responsibility of prosecutors.

Profile of People Who Sexually Exploit Children

The rapid growth of child pornography reveals a demand for the material by people who are stimulated by sexual activity with children. They are known as "pedophiles"—people who are predisposed to sexually use children or who turn to them as a result of conflicts or problems in their adult relationships. Some have organized and become vocal about what they believe is their right to sexual fulfillment. For example, the Rene Guyon Society in California purports to have 5,000 members who claim to have each deflowered a young child. Their motto: "sex by eight or it is too late." In May, 1977, the first meeting of the International Pedophilic Information Exchange was held in Wales. It advocates a change in the laws to permit sex between adults and "consenting" children, although such permission is a legal impossibility since children are not capable of consenting.

The pedophile's sexual access to children is gained by either pressuring the child into sexual activity through enticement, encouragement, or instruction, or by forcing such activity through threat, intimidation, or physical duress. However, pedophiles usually seek to control children rather than injure them. Pedophiles are not "dirty old men," but are rather at the younger end of the age spectrum. Many commit their first pedophilic offense while in their teens. Generally, they are neither retarded nor psychotic.

Although it is commonly believed that children are at greater risk of sexual victimization from homosexual adults than from heterosexual, this is not true. Research has found females not only victimized almost twice as often as male children, but where

". . . combatting the problem and protecting the children . . . is . . . an essential responsibility of prosecutors."

child sex offenders have a predominant sexual orientation toward adults, they largely lead exclusively heterosexual lives.

Profile of the Exploited Child

Those who sexually exploit children have little difficulty recruiting youngsters. Typically, the victims are runaways who come to the city with little or no money. It is estimated that as many as 1.8 million children run away from home each year. Adult exploiters pick them up at bus stations, hamburger stands and street corners and offer them money, gifts or drugs for sexual favors.

However, not all exploited children are runaways. Many seem to live normal lives with their families. Frequently, they are children who have been abused at home or live with parents who don't care about their activities. Often the parents are unaware of what their children are doing, but there have been cases where parents have sold their own children for sexual purposes.

The effects of sexual exploitation on children are devastating. Many children suffer physical harm as a result of the premature and inappropriate sexual demands placed on them. Perhaps more serious is the disruption of emotional development. Although the psychological problems experienced by children who are sexually exploited have not been extensively studied, there is ample evidence that such involvement is harmful. One recent study suggests that children who are used to produce pornography suffer harmful effects similar to those experienced by incest victims. Such effects may include depression, guilt and psychologically induced somatic disorders. Often, these children grow up to lead a life of drugs and prostitution. More tragically, children who are sexually abused are more likely to abuse their own children.

The Need for Effective Prosecution Under Child Pornography Laws

In the past six years, Congress and the state legislatures have played a crucial role in the fight against the rapidly growing problem of child pornography. Prior to 1977 there were few laws, either federal or state, directly addressing the issue. Today, virtually all states and the federal government have enacted laws to help deal with the problem.

In 1978 Congress enacted the *Protection of Children Against Sexual Exploitation Act* (Public Law 95–225, 18 U.S.C. §§ 2251–53). This law extends the federal government's authority to prosecute both the producers and distributors of child pornography. In addition, the law prohibits the transportation of all children across state lines for the purpose of sexual exploitation.

Signed into law in February, 1978, 18 U.S.C. § 2251 provides punishment for persons who use, employ or persuade minors (defined as any person under 16) to become involved in the *production* of visual or print material which depicts sexually explicit conduct, if the producer knows or has reason to know that the material will be transported in interstate or foreign commerce, or mailed. Punishment is also specifically provided for parents, legal guardians, or other persons having custody or control of minors who knowingly permit a minor to participate in the production of such material. *Distributors* of the material are also covered, as Section 2252 prohibits the shipping or receiving, for the purpose of commercial distribution, or "obscene" child pornography through interstate or foreign commerce or the mails. Finally, the law amends the Mann Act (18 U.S.C. § 2423) to extend protection to males who are transported across state lines for the purpose of prostitution and additionally prohibits the causing of a minor to engage in sexual conduct for commercial exploitation. Previously the Mann Act only prohibited the transportation of *females* for use in prostitution.

The sanctions provided by the law are stiff. Both production and distribution carry penalties of imprisonment up to ten years and fines up to $10,000. In addition, the maximum penalties are increased to 15 years imprisonment and $15,000 for subsequent offenses.

Regrettably, to date there have been no successful prosecutions against producers of child pornography under the Act, and as of April 1982, only fourteen convictions of distributors. Responsibility for investigation of these cases has been shared between the Federal Bureau of Investigation and the U.S. Postal Service (with the FBI having jurisdiction over the production aspects of the Act).

According to recent U.S. Justice Department testimony before the Congress, utilization of the Act has been limited by the fact that the statute covers only distribution for commercial purposes. Much child pornography is produced for the private self-gratification of pedophiles and is not necessarily produced for any commercial purpose. Many distributors of child pornography loan, trade or exchange this material, rather than sell it, through an underground pedophile "collectors" network. This has led the Department to call for the deletion of the "commercial purposes" or "pecuniary interest" requirement of the Act (legislation has been filed in the 97th Congress to accomplish this: H.R. 6287). To date, only three states (Arizona, California, and Illinois) have child pornography statutes which prohibit the exchanging or trading of this material.

However, child pornography, like child abuse, is generally a state concern. Yet prior to 1977, only two states had laws which prohibited the use of children in the production or distribution of pornographic materials or performances. Today, 49 states have enacted statutes which specifically deal with the problem.

A few states have dealt innovatively with this problem. For example, Idaho has included provisions in its child labor laws which prohibit the employment of children in productions which depict sexual conduct.[4] Other states have amended their child abuse laws to include provisions which prohibit using or permitting a child to perform in a sexually explicit act.[5] Some have even gone beyond the traditional notion that child abuse laws apply only to the parents or guardians of a child. For example, Hawaii describes the distribution of child pornography as "promoting child abuse."[6]

Most commonly, however, the states have followed the lead of the federal government and have created separate offenses within their criminal codes which specifically outlaw child sexual exploitation. These laws are similar to the obscenity laws, but many omit the requirement that the material *be obscene*. (In the *Ferber* decision, the Supreme Court ruled that such statutes do not violate the First Amendment). Instead, they prohibit using or permitting children to be filmed or photographed in specifically defined sexual acts. Additionally, they generally prohibit the distribution and sale of such materials.

The vast majority of these new criminal offenses are felonies. Prison terms vary, but are set around ten years in most states and range from one year to life imprisonment in others. Fines also vary, the most common being about $10,000, but they range from $1,000 to $50,000. A few states consider the crime a misdemeanor and provide penalties of less than one year and $1,000.

All of the sexual exploitation laws impose criminal liability on producers of child pornography. Coercing a child to participate in the production of material depicting sexually explicit conduct has been outlawed in a majority of states. A significant number of state laws specifically include parents as possible offenders, although many other states describe offenders in a more general sense as "any person who knowingly permits (sexual exploitation of a child)," which could be construed to include parents. Finally, a majority of states follow the federal law in specifically imposing criminal culpability on the distributors of child pornography.

Currently, about a dozen states have comprehensive laws which specifically cover all of these classes of offenders. Combined with the states that include people who "permit" children to be sexually exploited, almost half of the state child sexual exploitation laws can be considered comprehensive in terms of offenders.

Statutes which regulate child pornography must describe the type of production prohibited. Most laws prohibit the production of any "visual or print medium" which depicts children in prohibited sexual conduct. Visual or print medium as defined by the federal law means "any film, photograph, negative, slide, book, magazine, or other visual or print medium."

Children can also be sexually exploited by their use in live performances. Consequently, a majority of states also prohibit the production of live performances which depict children engaged in prohibited sexual conduct. While the use of children in such performances is certainly not as pervasive as other forms of child pornography, these states have found the situation serious enough to afford children this protection. The use of children in live sexual performances is not prohibited by the federal law, except where the children are transported across state lines for use in such shows.

Prosecutors face several evidentiary obstacles in child sexual exploitation cases. Among them is the prosecutor's burden of proving that the child was actually a minor at the time of the offense. This is particularly difficult in child pornography cases because the identity and location of the child depicted are usually unknown. To overcome this obstacle, the use of expert testimony to establish the child's age has been allowed in some

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states.[7] Also, several states permit the jury to make a subjunctive judgment regarding the age of the child without the aid of expert testimony.[8] Others have established a rebuttable presumption that a child appearing in pornography is under the age of majority.[9]

Several states have included other provisions within their new laws which assist prosecutors in gathering evidence. The California statute, for example, has a provision which requires adult bookstores to keep detailed records of all transactions from wholesalers and distributors of sexual material involving children.[10] Louisiana has a provision stating that possession of three or more items of child pornography is *prima facie* evidence of intent to sell or distribute.[11] The U.S. General Accounting Office report on this topic suggests the enactment of statutes which would require film processors and laboratories that receive what appear to be child pornography to turn the material over to local law enforcement bodies or the state's attorney.

Child Prostitution Laws

Virtually all of the new child sexual exploitation laws focus solely on pornography. Yet, as already noted, the use of children for sexual purposes is not limited to pornography; children are also commonly exploited by their use in prostitution. In fact, many children engage in prostitution before becoming involved in pornography. Thus, child prostitution, while often a forerunner, may be a more serious problem than child pornography.

More than half of the states have separate offenses for aiding child prostitution which are included under their general prostitution laws. These provisions generally prohibit causing, abetting, soliciting or promoting the prostitution of one under a specified age. The offense most commonly applied to those who prostitute minors under these general statutes is "promoting the prostitution of a minor." Promoting prostitution is usually defined as advancing or profiting from the prostitution of another. This offense is generally a higher degree offense than promoting the prostitution of an adult, and as such, has a higher corresponding penalty. The penalty for this offense is often the same as for the offense of inducing the prostitution of any person by use of force. Some of these provisions specifically state that it is not a defense that the person had reason to believe the child to be above the specified age.[12]

Other provisions under the general prostitution statutes that apply to the prostitution of minors (including soliciting, pandering, procuring, encouraging, and supervising) are again classified as higher degree offenses than those applicable to adults, and again have correspondingly greater penalties. Some of the general prostitution statutes have provisions that specifically provide punishment for those who permit the prostitution of any person over whom they exercise custody or control, or prohibit prostitution by a parent, legal guardian, or one having legal charge of another.

Some provisions of general prostitution law appear to be out of date. A few outlaw the prostitution of only female minors. However, this language is rare, and some statutes have language specifying that the acts mentioned are prohibited without regard to the sex of any of the parties. Three states separate their child prostitution prohibitions from their general prostitution laws (Arizona, Colorado and Nebraska). Under these statutes, each offense is stated separately and usually covers most of the activities related to prostitution. These include causing one to engage in, permitting a minor to engage in, financing, managing, supervising, controlling, transporting, promoting, procuring, encouraging, profiting from, receiving any benefit from, or soliciting a person to patronize a minor for the purposes of prostitution.

Legal Protection of the Victimized Child

In the event that the child is identified and located in a sexual exploitation case, prosecutors should be sensitive to the difficulties encountered by the child victim/witness. The use of an exploited child as a witness in a criminal prosecution can cause severe emotional problems for that child. He or she may be forced to relive the experience all over again, and endure the guilt and pressure imposed by a court proceeding. To prevent this, innovative techniques developed to protect sexual abuse and incest victims should be used in sexual exploitation cases as well. The system, in its zeal to prosecute the criminal, must not forget the purpose of these laws—to protect children. [For a detailed discussion of sensitive intervention techniques to protect child witnesses in such cases, see, J. Bulkley and H. Davidson, *Child Sexual Abuse: Legal Issues and Approaches*, National Legal Resource Center for Child Advocacy and Protection, American Bar

Association (1980) pp. 10–15; and J. Bulkley, *Child Sexual Abuse and the Law*, National Legal Resource Center for Child Advocacy and Protection, ABA (1981).]

Programs which provide counseling and other services to treat the serious emotional, psychological and physical harm suffered by these children should be identified. Referrals in these cases should regularly be made to the Child Protective Services agency. A number of excellent programs have been developed during the past few years which provide linkages between criminal prosecution and treatment-related programs for victims and offenders in intra-family child sexual abuse case. [See, J. Bulkley, *Innovations in the Prosecution of Child Sexual Abuse Cases*, National Legal Resource Center for Child Advocacy and Protection, American Bar Association (1981).] However, programs are just beginning to emerge which focus on the needs of child victims of sexual exploitation who are involved with law enforcement agencies.

One of these is the D.H.S. Exploited Child Unit in Louisville, Kentucky, which was established as a model of cooperating service delivery organizations dealing with child prostitution and pornography. This project of the Jefferson County Task Force on Juvenile Prostitution and Child Pornography began in July, 1980, as an arm of the county's Department of Human Services. It is housed in the county's Criminal Justice Commission office in order to work more closely with law enforcement agencies. The Task Force consists of representatives from the human services agency, state and local police departments, local F.B.I. and U.S. Postal Inspection Service, and the County and Commonwealth's Attorney's Office.

Following a massive public information campaign, the Task Force established a 24-hour hotline for reporting matters concerning child sexual exploitation, organized a statewide social service information/referral network and research program, and created a special Police-Social Work Team to handle these cases. Child-victims of sexual exploitation are now referred to the Exploited Child Unit which acts as a case coordinator when cases are being brought before the juvenile court. A goal of the Unit is to both assure effective coordination of the work of the various agencies involved in these cases and to obtain appropriate services for the child-victims. The Unit also provides a communications liaison between the law enforcement and social services community, assists the child in the interviewing process (while assuring that his/her legal rights are protected), helps secure necessary protective custody orders from the court, and establishes a long-term relationship and rapport with the child and family so as to enable successful prosecution of the exploiter.

Conclusion

In its recent report on this subject, the U.S. General Accounting Office presented expert recommendations on the prevention of child sexual exploitation and the rehabilitation of its victims. These included suggestions that:

- Law enforcement officials enforce prostitution laws more vigorously.
- Police develop a more aggressive approach to child sex crimes and establish special child exploitation units to deal with the overlapping problem of child pornography, child prostitution, runaways, and child molestation.
- Prosecutors aggressively pursue convictions in child pornography cases and be specially trained to ensure convictions.
- Legislators increase the effectiveness of present statutes for prosecution of pimps, especially pimps of juvenile prostitutes, as well as to make it easy to prosecute customers of prostitutes, especially customers of juvenile prostitutes.

If each of these proposed solutions is carried out, we can make great strides in combatting this serious problem. **FBI**

Footnotes

[1] U.S. Congress. House Committee on Education and Labor. Hearings before the Subcommittee on Select Education, Ninety-Fifth Congress, First Session (Hearings held May 27–31 and July 10, 1977). Ninety-Seventh Congress, Second Session (Hearings held April 23 and June 24, 1982). House Committee on the Judiciary. Hearings before the Subcommittee on Crime, Ninety-fifth Congress, First Session (Hearings held May 23, 25, June 10, and September 20, 1977); Senate Judiciary Committee. Hearings before the Subcommittee to Investigate Juvenile Delinquency, Ninety-fifth Congress, First Session (Hearings held May 27 and June 16, 1977). Hearings before the Subcommittee on Juvenile Justice, Ninety-Seventh Congress, First and Second Session (Hearings held November 5, 1981 and April 1, 1982).

[2] Report to the Chairman, Subcommittee on Select Education, House Committee on Education and Labor, by the U.S. General Accounting Office. *Sexual Exploitation of Children—A Problem of Unknown Magnitude.* HRD-82-64.

[3] *New York v. Ferber,* 50 U.S.L.W. 5077 (U.S. July 2, 1982), *reversing and remanding* 422 N.E. 2d 523 (1981).

[4] Idaho Code § 44-1306 (1979).

[5] *See, e.g.,* Maryland Code Ann. Art. 27, § 35A (Supp. 1982).

[6] Hawaii Rev. Stat. §§ 707-750 to 751 (Supp. 1979).

[7] *See, e.g.,* 18 Pennsylvania Cons. Stat. Ann. § 6312(d) (1981).

[8] *See, e.g.,* Alabama Code 7-23303 (Supp. 1980); New York Penal Law § 263.05 (1980).

[9] New Jersey Stat. Ann. § 2C:24-4 (1981).

[10] California Labor Code § 1308.5(a)–(b) (West Supp. 1982).

[11] Louisiana Rev. Stat. Ann. § 14.81.1 (Supp. 1981).

[12] *See, e.g.,* Colorado Rev. Stat. § 18-7-407 (1978).